

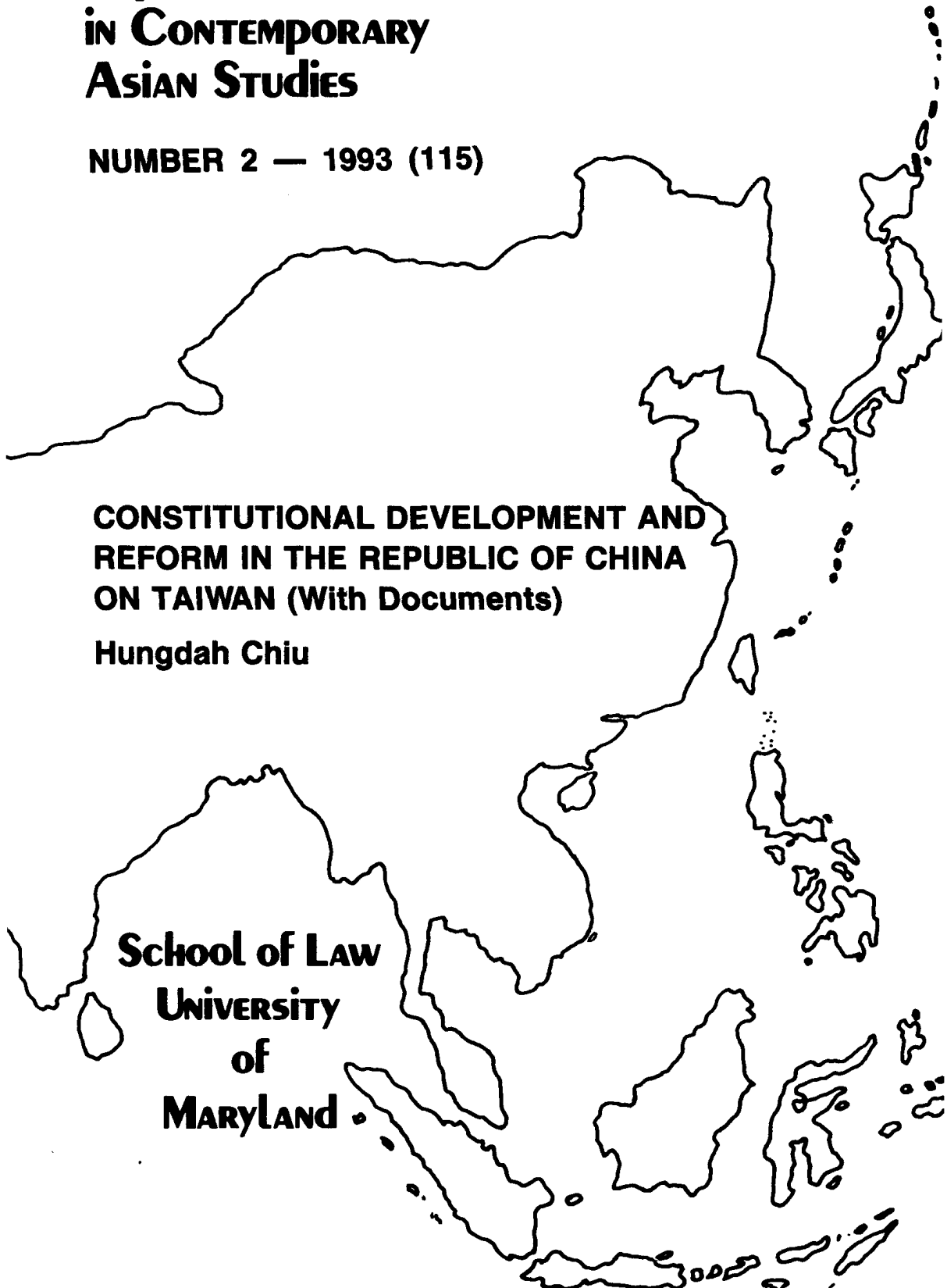
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**CONSTITUTIONAL DEVELOPMENT AND  
REFORM IN THE REPUBLIC OF CHINA  
ON TAIWAN (With Documents)**

**Hungdah Chiu**

**School of Law  
University  
of  
Maryland**



## ***Occasional Papers/Reprint Series in Contemporary Asian Studies***

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# CONSTITUTIONAL DEVELOPMENT AND REFORM IN THE REPUBLIC OF CHINA ON TAIWAN\* (With Documents)

*Hungdah Chiu*

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# Constitutional Development and Reform in the Republic of China on Taiwan\*

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*Modern constitutionalism, with its principles of separation of powers, checks and balances, and popularly-elected Congress and officials, is unknown to traditional China. It was introduced to China in the late nineteenth century. Between 1912 and 1945, various versions of constitution were enacted and drafted, but it was not until December 25, 1946, that a formal democratic constitution was adopted by the popularly-elected National Assembly, which entered into force on December 25, 1947.*

*The defeat of Republican forces by the Chinese Communist forces in the 1946-49 Chinese civil war and the removal of the Republic of China (ROC) government to Taiwan in late 1949 ended the operation of this constitution on the mainland; but in Taiwan this constitution has been continued in force.*

*Because of the Chinese Communist threat to take over Taiwan by force, martial law was proclaimed in 1949, extraordinary powers were granted to the President by the Temporary Provisions enacted by the National Assembly, and elections for national elective bodies—the National Assembly, the Legislative Yuan, and the Control Yuan—were suspended.*

*With the reduction of tension in the Taiwan Strait since the late 1970s, the ROC government gradually restored full constitutional rule. Martial law was lifted in July 1987 and the ban on organizing political parties was abolished.*

*On April 23, 1991, the Extraordinary Session of the National Assembly adopted Additional Articles of the Constitution of the ROC, which make all members of the national elective bodies be periodically elected in Taiwan. On December 21, 1991, the Second National Assembly election was held and the Assembly in 1992 adopted more Additional Articles of the Constitution to strengthen democracy in the ROC, but the Assembly could not decide on the method of electing the President of the Republic—by electoral college or popular election, which will be decided in an extraordinary session of the National Assembly to be convened by the President before 1995. With these reforms, the ROC is now a full-fledged democracy.*

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\*Revised version of a paper delivered at the Sino-American-European Conference on Contemporary China, Taipei, August 17-19, 1992.

\* \* \*

### The Introduction of Western Constitutionalism to China

While China is the oldest living civilization in the world, it is, in comparison with Western countries such as the United States and the United Kingdom, far behind in developing a constitutional government for the Chinese people. The term "*hsien-fa*," which is the Chinese term for constitutional law, does appear in ancient Chinese literature, but it does not connote the modern meaning of the Western term "constitutional law." In *Kuo-yu* (State chronology of events) written by Tso Ch'iu-ming sometime in the Spring and Autumn Period (eighth to fifth century B.C.), it is stated that "to reward good people and to punish evil people is the constitutional law of a state."<sup>1</sup> Thus, the use of the term constitutional law here does not imply that it is the highest legal order in a state. Therefore, it appears clear that modern constitutionalism, with its principles of separation of powers, checks and balances, and popularly-elected Congress and officials, is unknown to traditional China.

In the early nineteenth century, Chinese officials had difficulty in comprehending the American constitutional government system. Thus, one finds the following interesting description of the American government in a memorial submitted by the Viceroy of Canton to the Chinese emperor, dated July 19, 1817:

The commercial ships of America are . . . numerous and the Americans are most respectful and submissive to us. These barbarians do not have a king, but only a chief (*t'ou-jen* [i.e., headman]). It is their custom to elect several persons who draw lots to serve as chief for four years. Commercial business is managed by individuals; it is not controlled by their chief.<sup>2</sup>

Although in traditional China the emperor possessed all legislative, executive, and judicial power, the imperial rule was not absolute, and there were some limitations on the emperor's authority in practice, usage, and the teachings of the ancients, particularly Confucius. Beyond that, the censors had the duty to watch and criticize any member of the entire official system, including the emperor.<sup>3</sup> Therefore, the

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<sup>1</sup>*Ta tz'u-tien* (Great dictionary), vol. 1 (Taipei: San-min shu-chü, 1985), 1688.

<sup>2</sup>Lo-shu Fu, *A Documentary Chronicle of Sino-Western Relations 1644-1820*, vol. 1 (Tucson: The University of Arizona Press, 1966), 411.

<sup>3</sup>Shao-chuan Leng, "Chinese Law," in *Sovereignty Within the Law*, ed. Arthur Lason and C. Wilfred Jenks (Dobbs Ferry, New York: Oceana, 1965), 245-46.

### CONSTITUTIONAL DEVELOPMENT AND REFORM IN THE ROC 3

Chinese tradition did embody a counterpart to the modern constitutional limitation on the power of the government, but this counterpart never developed into an effective check on the power of the emperor through an elected body such as a Congress or Parliament in Western countries.

With the gradual opening of China after the mid-nineteenth century, many Chinese went abroad as workers, students, or visiting scholars. As a result of this contact between China and the West, the Chinese came to know Western political systems and constitutionalism better. In 1889, Japan adopted a Western-style constitution (usually referred to as the Meiji constitution) and soon became an important power. This event also significantly influenced Chinese political and constitutional development.

On June 30, 1895, an intellectual named K'ang Yu-wei submitted a memorial to Emperor Kuang-hsu (1875-1908), urging him to take a series of reform measures. Among the proposed reforms were the creation of a parliament, the adoption of a constitution, and the division of power between the executive, the legislative, and the judiciary.<sup>4</sup> In other words, K'ang proposed a constitutional monarchy similar to that of Japan. Emperor Kuang-hsu, K'ang, and his associates tried to implement part of the reform measures (but not the constitutional aspects) that K'ang had suggested between June 11 and September 20, 1898, but this ended only in K'ang's exile abroad and the "house arrest" of the Emperor himself by Empress Dowager Tz'u-hsi for the rest of his reign.<sup>5</sup>

On June 21, 1900, the Ch'ing government under Empress Dowager Tz'u-hsi, relying on the superstitious Boxers, declared war against the Western powers. The Western powers retaliated by sending an expeditionary force to invade China and soon occupied Peking, and on September 7, 1901, China was compelled to sign the most humiliating peace treaty it ever concluded.<sup>6</sup> The treaty not only required China to pay a heavy indemnity of 450 million taels of silver, but also allowed foreign countries to station troops in the Chinese capital, Peking.

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<sup>4</sup>Immanuel C. Y. Hsu, *The Rise of Modern China* (New York and London: Oxford University Press, 1970), 444.

<sup>5</sup>See *ibid.*, 445-51.

<sup>6</sup>Final Protocol between Austria-Hungary, Belgium, Germany, Great Britain, Italy, Japan, the Netherlands, Russia, Spain, and the United States and China for the Resumption of Friendly Relations, signed at Peking, September 7, 1901, in *Consolidated Treaty Series*, vol. 190 (Dobbs Ferry, New York: Oceana, 1969), 61-78.

However, this tragedy forced the Ch'ing government to institute some reforms leading toward constitutional government, in order to undercut the revolutionary movement to overthrow the Ch'ing Dynasty.

In 1905, the tiny constitutional monarchy of Japan defeated the colossal dictatorial Russian Empire. To many Chinese this was proof of the effectiveness of constitutionalism. They also discovered that nearly all leading Western powers were constitutional governments. The famous scholar-turned-industrialist, Chang Chien, commented that "the victory of Japan and the defeat of Russia are the victory of constitutionalism and the defeat of monarchism." He urged Yuan Shih-k'ai, then governor-general of Chihli, to assume vigorous leadership in promoting the cause of constitutionalism.<sup>7</sup>

At the same time, revolutionaries led by Dr. Sun Yat-sen opposed the idea of a constitutional monarchy and contended that it was essential for China to overthrow the Ch'ing Dynasty and establish a republican form of government, which of course would be based on a democratic constitution.

Finally, in July 1905, the Empress Dowager accepted Yuan Shih-k'ai's recommendation to send high officials abroad to investigate foreign political systems as a prelude to introducing a constitution. An inspection mission was soon sent to visit Japan, Great Britain, France, Belgium, the United States, Germany, the Austro-Hungarian Empire, and Italy. The mission returned in July 1906.

The mission reported favorable impressions of the British and German systems of government, but concluded that the Japanese constitution was more suitable to China because of greater similarity between the two countries. On August 27, 1908, the Ch'ing government issued an "Outline of Constitution," a parliamentary law, and prescribed a nine-year tutelage period (1908-17) before the constitution became effective.<sup>8</sup>

On October 10, 1911, revolution broke out in Wuchang, resulting in the abdication of the Ch'ing Dynasty on February 12, 1912. On November 2, 1911, in order to thwart the revolutionary movement, the Ch'ing government promulgated the "Nineteen Articles [on Constitutional Law]," which, however, never entered into force.<sup>9</sup> Therefore,

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<sup>7</sup>Hsu, *The Rise of Modern China*, 493.

<sup>8</sup>Ibid., 498.

<sup>9</sup>Text in Teaching and Research Office of Constitutional Law and Office of [Research] Materials of the Department of Law of Peking (Beijing) University, eds., *Hsien-fa*



no constitution was ever adopted before the downfall of the Ch'ing Dynasty.

### Constitutional Development in the Republican Period, 1912-46

The Republic of China (ROC) was established on January 1, 1912. A twenty-one article General Plan for Organization of the Provisional Government of the Republic of China had been adopted on December 2, 1911 by delegates from ten provinces, and after several revisions it was finalized on January 2, 1912 with the approval of delegates from seventeen provinces.<sup>10</sup> Article 21 provides that the General Plan would be effective until the adoption of the Constitution of the Republic of China. This is the first constitution adopted by China. This constitution bore some striking similarities to the original United States Constitution, as it made the provisional President the real chief-executive, and there was no mention of the basic rights and duties of the people.<sup>11</sup>

On March 11, 1912, a Provisional Constitution of the Republic of China was promulgated.<sup>12</sup> It contained fifty-six articles and changed the American-style presidential system established in the General Plan to the cabinet system based on the French model. A unicameral house, the Senate, was appointed by each province, Inner Mongolia, Outer Mongolia, Tibet, and Tsinghai and was to exercise the legislative power (Article 18). Within ten months, however, the Senate was required to enact laws for the organization of the Congress and its election method (Article 53). On August 10, 1912, the Organic Law for the Congress (House and Senate), the Election Law for the House, and the Election Law for the Senate were all enacted, and an election was soon held in early 1913. On April 8, 1913, the Congress was inaugurated.<sup>13</sup>

When formulating a draft for a permanent constitution on October

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*tzu-liao hsüan-pien* (Selected materials on constitutional law), vol. 2 (Peking: Peking University Press, 1982), 251-52.

<sup>10</sup>Text in *ibid.*, 253-55.

<sup>11</sup>Herbert H. P. Ma, "Republic of China," in *Constitutionalism in Asia: Asian Views of the American Influence*, ed. Lawrence W. Beer (Berkeley, Calif.: University of California Press, 1979), 40-41.

<sup>12</sup>Text in *Hsien-fa tzu-liao hsüan-pien* 2:256-61.

<sup>13</sup>Lo Chih-yuan, *Chung-kuo hsien-fa yü cheng-fu* (Chinese constitution and government), 3rd printing (Taipei: Cheng-chung shu-chü, 1979), 133.

31, 1913, the Congress retained the cabinet system.<sup>14</sup> However, President Yuan Shih-k'ai opposed this draft constitution, and on November 4, 1913, he illegally dissolved the Congress. Yuan organized a Constitutional Conference to draft a new constitution, which was promulgated on May 1, 1914.<sup>15</sup> This constitution adopted a presidential system with widespread powers.

Yuan later attempted to restore the imperial system and make himself the emperor of China, but he failed and later died on June 6, 1916. For the next decade, the Chinese government was controlled by different factions of warlords. During this period a warlord, Ts'ao K'un, had himself elected president in June 1923 by the Congress through bribing its members.<sup>16</sup> He promulgated a new constitution on October 10, 1923.<sup>17</sup> However, on November 2, 1924, Ts'ao was forced to resign by another warlord, Feng Yü-hsiang. General Tuan Ch'i-jui was invited by other warlords to be the executive of a provisional government, and Ts'ao K'un's constitution was abrogated.<sup>18</sup> Chief-Executive Tuan promulgated a six-article law on the organization of the provisional government,<sup>19</sup> and in December 1925 he put out a draft constitution.<sup>20</sup> But in April 1926, Tuan's government collapsed.

The Chinese Nationalist Party (Kuomintang, KMT) established a military government at Canton in southern China on August 25, 1917. In 1921, the parliament in Canton elected Dr. Sun Yat-sen as the president of the southern government. On July 1, 1925, the National Government was established at Canton. In June 1926, Chiang Kai-shek launched the Northern Expedition from Canton and on April 18, 1927 declared Nanking as the capital of China. In December 1928, the Nationalist Government unified China, and soon engaged in drafting a new constitution based on Dr. Sun Yat-sen's *Three Principles of the People*, that is, Nationalism, Democracy, and People's Livelihood.<sup>21</sup>

According to Dr. Sun, citizens should have the right of election, recall, initiative, and referendum to participate directly in the governing

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<sup>14</sup>Text in *Hsien-fa tzu-liao hsüan-pien* 2:262-72.

<sup>15</sup>Text in *ibid.*, 273-80.

<sup>16</sup>Hsu, *The Rise of Modern China*, 575.

<sup>17</sup>Text in *Hsien-fa tzu-liao hsüan-pien* 2:283-98.

<sup>18</sup>Lo, *Chung-kuo hsien-fa yü cheng-fu*, 276.

<sup>19</sup>See *ibid.*, 276-77.

<sup>20</sup>See *ibid.*, 282-87.

<sup>21</sup>See Sun Yat-sen, *The Three Principles of the People*, abridged from the translation by Frank W. Price (Taipei: China Publishing Co., 1981).

process. However, because of the extensive land area and large population of China, Dr. Sun proposed to create a National Assembly to represent the people at the central government in the exercise of these four rights.

With respect to governmental functions, he tried to combine the traditional Chinese and Western systems. Though he favored the Western separation of powers system of the executive, legislative, and judicial branches, he considered that the traditional Chinese independent civil service examination system and the independent censorate system should be added to the three-power Western system. Therefore, his ideal government system is a five-power system.

In view of the fact that the electoral system was unknown in traditional China and most Chinese people were illiterate or semi-literate, Dr. Sun proposed to have a period of political tutelage under the leadership of the Chinese Nationalist Party before full democracy was introduced to the whole Chinese nation. During the period of tutelage, the government was to expand education and teach people how to exercise four rights—election, recall, initiative, and referendum—at the local level.<sup>22</sup>

Based on Dr. Sun's theory, the Chinese Nationalist Party, which then controlled the National Government, announced on June 15, 1929 that it planned to end the Period of Political Tutelage by 1935. On June 1, 1931, it promulgated the Provisional Constitution for the Period of Political Tutelage.<sup>23</sup>

On May 5, 1936, the National Government promulgated the Draft Constitution of the Republic of China,<sup>24</sup> which was primarily based on Dr. Sun Yat-sen's five-power system and is unlike any system in the Western democracies. According to this draft,<sup>25</sup> the National Assembly elected by the people is the highest organ of the state. It elects or recalls the President, Vice President, Premier and Vice Premier of the Executive Yuan; the President, Vice President, and members of

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<sup>22</sup>See Outline of National Reconstruction, promulgated by the National Government on April 12, 1924. Text in *Hsien-fa tzu-liao hsüan-pien* 2:299-302.

<sup>23</sup>Text in *ibid.*, 331-38.

<sup>24</sup>Text in *ibid.*, 370-85.

<sup>25</sup>For a detailed analysis of this draft, see Chin Ming-sheng, *Kuo-min cheng-fu hsüan-pu Chung-hua min-kuo hsien-fa ts'ao-an shih-i* (An explanation of the draft constitution of the Republic of China announced by the National Government) (Shanghai: Shih-chieh shu-chü, 1936). For a summary comment on the draft, see Ch'ien Tuan-sheng, *The Government and Politics of China* (Cambridge, Mass.: Harvard University Press, 1950, reprinted in 1967), 303-6.

the Legislative Yuan; and the President, Vice President, and members of the Control (Censorate) Yuan. It may also initiate laws, exercise a referendum on a law passed by the Legislative Yuan, and amend the Constitution (Article 32). However, while the term of a delegate to the National Assembly is six years, the Assembly will meet for one month every three years. Only the President or 40 percent of the Assembly delegates may convene an extraordinary session of the Assembly (Article 31). Therefore, the legislative power, in fact, is delegated to the indirectly elected Legislative Yuan. Otherwise, the people would have great difficulties in supervising the government.

The executive power is vested with the President, who appoints or dismisses the Premier, Vice Premier, and all members of the Cabinet (Article 42). Each member of the cabinet is individually responsible to the President (Article 59). The President can also veto a bill or other decisions passed by the Legislative Yuan, though the latter may override the President's veto by a two-thirds majority. After overriding the presidential veto, the President may still refer a law or a treaty to the National Assembly for referendum (Article 70).

In short, the Draft Constitution adopted a presidential system without an effective mechanism to check or balance the President's extensive power.

The National Government planned to convene the National Assembly to adopt the Constitution on November 12, 1936. Because of a delay in the election, the scheduled date for convening the National Assembly was postponed to November 12, 1937. However, the outbreak of the full-scale Sino-Japanese War on July 7, 1937 indefinitely postponed the convocation of the National Assembly.

### **The Enactment of the 1946 Constitution**

After the end of World War II in September 1945, the National Government convened a "Political Consultative Conference," composed of twenty-nine delegates representing different political parties and nonpartisan groups, from January 10 to 30, 1946. The May 5, 1936 Draft Constitution with its dominant presidential system was severely criticized, and the Conference adopted several radical changes to the May 5, 1936 draft as stated below:<sup>26</sup>

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<sup>26</sup>For the complete text on the constitutional issue decided by the Conference, see Ch'in

## CONSTITUTIONAL DEVELOPMENT AND REFORM IN THE ROC 9

1. The National Assembly should be abolished.
2. The Executive Yuan should correspond to the Cabinet and the Legislative Yuan to the parliament, as in other democratic countries. Members of the Legislative Yuan should be elected by the people directly.
3. The Control Yuan (Censorate) should be transformed into an upper house with its members elected by provincial assemblies.
4. The President should be elected and recalled by representatives of county and provincial assemblies, before the popular election is held.
5. The President should be able to issue an emergency decree through the resolution of the Executive Yuan Council, but within one month the decree must be approved by the Legislative Yuan.
6. Each province should enjoy self-government and home rule.

The National Assembly was convened on November 5, 1946, and on December 25, 1946 it adopted the Constitution of the Republic of China, which entered into force on December 25, 1947. The main contents of this constitution<sup>27</sup> are summarized below.

1. *Preamble*. It states that the Constitution is enacted in accordance with the teachings bequeathed by Dr. Sun Yat-sen.

2. *Chapter I. General Provisions*. The Republic of China shall be a democratic republic of the people, to be governed by the people and for the people (Article 1), the sovereignty shall reside in the whole body of citizens (Article 2), and there shall be equality among the various racial groups in the Republic of China (Article 5).

3. *Chapter II. Rights and Duties of the People*. All citizens are equal before the law (Article 7), and personal freedoms are guaranteed by a system similar to habeas corpus (Article 8).<sup>28</sup> No person shall be

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Hsiao-i, ed., *Chung-hua min-kuo chung-yao shih-liao ch'u-pien—Tui-Jih k'an-chan shih-ch'i*. Ti-ch'i-p'ien, *Chan-hou Chung-kuo* (Preliminary compilation of important historical materials of the Republic of China—The period of the war resisting Japanese [aggression]. Part 7: Postwar China), vol. 2 (Taipei: Distributed by Chung-yang wen-wu kung-ying-she, 1981 [actual year of publication is 1984]), 240-42. For a summary of this issue, see Ch'ien, *The Government and Politics of China*, 317-18.

<sup>27</sup>English translation in *Republic of China Yearbook 1990-91* (Taipei: Kwang Hwa Publishing Co., 1990), 712-21. For an analysis of the structure of this constitution, see Tsao Wen-yen, *The Constitutional Structure of Modern China* (Melbourne: Melbourne University Press, 1947).

<sup>28</sup>Complete text of Article 8 is:

Personal freedom shall be guaranteed to the people. Except in case of *flagrante delicto* as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law. No person shall be tried or punished otherwise than by a law court in accordance with the procedure prescribed by law. Any arrest, detention, trial, or punishment which is not in accordance with the procedure prescribed by law may be resisted.

subjected to trial by a military tribunal except for those in military service (Article 9). The people shall have freedoms of residence, change of residence (Article 10), speech, teaching, writing, publication (Article 11), privacy of correspondence (Article 12), religious belief (Article 13), assembly and association (Article 14). The people shall have the right of existence, work, property (Article 15), presenting petitions, lodging complaints, instituting legal proceedings (Article 16), election, recall, initiative, referendum (Article 17), taking public examinations, and holding public offices (Article 18). With respect to duties, the people shall pay taxes (Article 19) and perform military service in accordance with law. In view of the Chinese tradition emphasizing education, the Constitution provides that the people have not only the right but also the duty to receive education (Article 21). There is also a provision guaranteeing those freedoms and rights not provided in the Constitution as long as they "are not detrimental to social order or public welfare" (Article 22). The freedom and rights enumerated in the above articles "shall not be restricted by law except by such as may be necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order, or to advance public welfare" (Article 23). Article 24 establishes the state compensation system for damage done by a public functionary who, in violation of law, infringes upon the freedom or right of any person.

4. *Chapter III. The National Assembly.* The National Assembly is retained despite the fact that the 1946 Political Consultative Conference suggested its abolition, but the Assembly's power is now limited to the election and recall of the President and the Vice President, amending

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When a person is arrested or detained on suspicion of having committed a crime, the organ making the arrest or detention shall in writing inform the said person, and his designated relative or friend, of the grounds for his arrest or detention, and shall, within 24 hours, turn him over to a competent court for trial. The said person, or any other person, may petition the competent court that a writ be served within 24 hours on the organ making the arrest for the surrender of the said person for trial.

The court shall not reject the petition mentioned in the preceding paragraph, nor shall it order the organ concerned to make an investigation and report first. The organ concerned shall not refuse to execute, or delay in executing, the writ of the court for the surrender of the said person for trial.

When a person is unlawfully arrested or detained by any organ, he or any other person may petition the court for an investigation. The court shall not reject such a petition, and shall, within 24 hours, investigate the action of the organ concerned and deal with the matter in accordance with law.

the Constitution, and voting on proposed constitutional amendments submitted by the Legislative Yuan by way of referendum (Article 27).

5. *Chapter IV. The President.* The President is the head of state (Article 35) and supreme commander of the land, sea, and air forces (Article 36). The President shall appoint and remove civil and military officials (Article 41) and exercise other powers; he shall promulgate laws and issue mandates only with the counter-signature of the Premier of the Executive Yuan or ministers concerned (Article 37). This makes the President's position similar to that of Western democracies with a cabinet system where the real power is vested with the premier, a leader of the majority party, or a coalition. However, the President still has some real powers under this Constitution. He may, in accordance with law, declare martial law with the approval of, or subject to confirmation by, the Legislative Yuan (Article 39). He can also exercise emergency powers. In case of a natural calamity, an epidemic, or a national financial or economic crisis that calls for emergency measures, the President, during the recess of the Legislative Yuan, may, by resolution of the Executive Yuan Council, and in accordance with the Law on Emergency Orders, issue emergency orders proclaiming such measures as may be necessary to cope with the situation. Such an order, however, shall, within one month after issuance, be presented to the Legislative Yuan for confirmation; in case the Legislative Yuan withholds confirmation, the said order shall forthwith cease to be valid (Article 43). Moreover, in case of disputes between two or more Yuans other than those for which there exist relevant provisions in the Constitution, the President may call a meeting of the Premier or Presidents of the Yuans concerned for consultation with a view to reaching a solution (Article 44). Finally, the President may approve the request of the Premier of the Executive Yuan to veto a bill passed by the Legislative Yuan, which the latter can override only by a two-thirds majority (Article 57, paragraph 2).

6. *Chapter V. Administration.* The Executive Yuan is the highest administrative organ of the state (Article 53). The Premier [President] of the Executive Yuan is appointed by the President with the approval of the Legislative Yuan (Article 55, paragraph 1) and is responsible to the latter (Article 57). The Legislative Yuan may by resolution request the Executive Yuan to change any important policy, but the latter may, with the approval of the President, petition the Legislative Yuan for reconsideration. If a two-thirds majority of the Legislative Yuan upholds the original resolution, the Premier shall either accept the resolution or resign from office (Article 57, paragraph 2). As stated

earlier, the Premier may seek the approval of the President to veto a bill adopted by the Legislative Yuan, which can only be overridden by a two-thirds majority of the Legislative Yuan (Article 57, paragraph 3).

7. *Chapter VI. Legislation.* The Legislative Yuan is comprised of members directly elected by the people, occupational groups, and overseas Chinese and is the highest legislative organ of the state (Articles 62 and 64). Members of the Legislative Yuan may not concurrently hold any governmental post (Article 75) and this makes the Chinese system different from other cabinet systems. While the Legislative Yuan has extensive legislative and budgetary powers, it shall not make proposals for an increase in the expenditures in the budgetary bill presented by the Executive Yuan (Article 70). The Legislative Yuan may also propose constitutional amendments and submit the same to the National Assembly for referendum (Article 174, paragraph 2).

8. *Chapter VII. Judiciary.* The Judicial Yuan is in charge of civil, criminal, and administrative cases and disciplinary measures against public functionaries (Article 77). Its Grand Justices, who are appointed by the President of the Republic with the consent of the Control Yuan, are in charge of interpreting the Constitution and unifying the interpretation of laws and orders (Articles 78 and 79). Judges shall hold office for life (Article 81) and shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference (Article 80).

9. *Chapter VIII. Examination.* The Examination Yuan is in charge of matters relating to examination, employment, registration, service rating, scales of salaries, promotions and transfers, security of tenure, commendation, pecuniary aid in case of death, retirement, and old-age pensions of government employees (Article 83). Its President, Vice President, and members are appointed by the President of the Republic with the consent of the Control Yuan (Article 84).

10. *Chapter IX. Control Yuan.* The Control Yuan consists of members elected by Councils of Provinces or their equivalents (big cities) and overseas Chinese, and exercises powers of consent, impeachment, censure, and auditing (Articles 90 and 91).

11. *Chapter X. Power of the Central and Local Government.* The powers of the Central, Provincial, and City or County governments are specified in the Constitution (Articles 107 to 110). However, any matter not enumerated in the Constitution shall fall within the jurisdiction of the Central Government, if it is national in nature; of the province, if it is provincial in nature; and of the county or city,



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if it concerns the county or city. The Legislative Yuan shall settle any dispute (Article 111).

12. *Chapter XI. System of Local Government.* The self-government of provinces and counties or cities is assured in the Constitution, and the provincial governors, county magistrates, and city mayors shall be elected directly by the people (Articles 112-128).

13. *Chapter XII. Election, Recall, Initiative, and Referendum.* Except for those prescribed by the Constitution, all kinds of elections shall be held by universal, equal, and direct suffrage and by secret ballots (Article 129). All candidates are required to openly campaign for their election (Article 131). In various kinds of elections, the number of women to be elected shall be fixed by law (Article 134).

14. *Chapter XIII. Fundamental National Policies.* The land, sea, and air forces shall be above personal, regional, or party affiliations, and they shall be loyal to the state and shall protect the people (Article 138). Neither political party nor any individual shall make use of the armed forces as an instrument in a struggle for political powers (Article 139), and no military man in active service may concurrently hold a civil office (Article 140). The national economy shall seek to effect equalization of land ownership and the restriction of private capital in order to attain a well-balanced sufficiency in national wealth and people's livelihood (Article 142); but private citizens' productive enterprises and foreign trade shall receive encouragement, guidance, and protection from the state (Article 145). Within the territory of the Republic, all goods shall be permitted to move freely from place to place (Article 148). In order to promote social welfare, the state shall establish a social insurance system (Article 155) and a system of public medical services (Article 157). All children of school age from six to twelve shall receive free primary education and all citizens above school age who have not received primary education shall receive supplementary education free of charge (Article 160).

15. *Chapter XIV. Enforcement and Amendment of the Constitution.* Laws that are in conflict with the Constitution shall be null and void, and the Judicial Yuan shall decide whether there is a conflict (Article 171). Ordinances that are in conflict with the Constitution or with the laws shall be null and void (Article 172). The Constitution may be amended upon the proposal of one-fourth of the members of the National Assembly and by a resolution of three-fourths of the delegates present at a meeting having a quorum of two-thirds of the entire Assembly (Article 174). As stated earlier, the

Legislative Yuan may propose an amendment and submit the same to the Assembly for referendum.

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General elections for delegates to the first National Assembly and members of the Legislative Yuan and the Control Yuan in areas under the control of the National Government were held in 1947 and 1948 in accordance with the Constitution. The president and vice president were elected by the National Assembly and they took office on May 20, 1948. A constitutional government had finally come into effect in China.

The defeat of the Republican forces by the Chinese Communist forces in the 1946-49 civil war and the removal of the Republican Government to Taiwan in late 1949 ended the operation of this Constitution on the mainland; but in Taiwan this Constitution has been in force since its entry into force on December 25, 1947.

#### **Temporary Provisions of the Constitution and the President's Emergency Power**

When the first National Assembly met at Nanking in March-April 1948, full-scale civil war between the government forces and the Chinese Communist forces had been continuing for some time; therefore, the National Assembly, through the constitutional amendment procedure, adopted "Temporary Provisions Effective During the Period of Mobilization for the Suppression of Communist Rebellion" on April 18, 1948 which became effective on May 10, 1948.<sup>29</sup>

According to these provisions, the President may, for the period in question, by resolution of the Executive Yuan (Cabinet) Council, take any emergency measure necessary to prevent the state or the people from facing immediate danger or to cope with serious financial or economic crises without being subject to the procedural restrictions of the Legislative Yuan, as prescribed in Articles 39 and 43 of the Constitution. These two articles provide the first of the President's emergency powers. Article 39 provides that the President may declare

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<sup>29</sup>See *Kuo-chia chien-she ts'ung-k'an*, ti-i-ts'e, *Tsung-lun* (National reconstruction series, vol. 1, General discussion) (Taipei: Cheng-chung shu-chü, 1971), 224-26.

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the institution of martial law (which in Taiwan is similar to a state of siege in other constitutions) but must secure prior or subsequent approval from the Legislative Yuan. Article 43 provides that during a natural calamity, epidemic, or a serious financial or economic crisis, when the Legislative Yuan is in recess, the President may issue emergency orders by resolution of the Executive Yuan Council and in accordance with the Law on Emergency Orders,<sup>30</sup> but that orders will lapse unless they are confirmed by Legislative Yuan within one month. Under the Temporary Provisions, this procedural requirement of confirmation by the Legislative Yuan was removed, the term “orders” was replaced by the term “measures” and the situation authorizing the President to take such measures was changed to “immediate danger” rather than narrowly defined “natural calamity” or “epidemic.” However, the Legislative Yuan, under Article 57 of the Constitution, can still modify or annul presidential emergency measures by a resolution. Such a resolution, however, is subject to presidential veto, which in turn can only be overridden by a two-thirds majority of the Legislative Yuan—an unlikely event.

Despite the extent of the President’s emergency power, the experience of the last four decades has unequivocally demonstrated that the President has used maximum restraint in exercising this power. In fact, the President has invoked his emergency powers on only four occasions. In the first case, the power was invoked to declare the application of martial law in civil war areas in 1948-49, and in the second it was invoked to announce monetary reforms during the same critical stage of the civil war. The third case enabled the President to deal with serious floods that occurred in the central and southern parts of Taiwan in 1958. The last occasion was announced by the President on December 16, 1978, to put the armed forces on full alert, to take necessary measures to maintain economic stability and development, and to suspend the pending election of national elective bodies when the United States abruptly announced its decision on December 16, 1978 to terminate diplomatic relations with the ROC on January 1, 1979, and to abrogate the U.S.-ROC mutual defense treaty a year later.

On March 19, 1966, the National Assembly amended the Temporary Provisions and gave the President additional powers.<sup>31</sup>

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<sup>30</sup>The law has not yet been enacted.

<sup>31</sup>*Kuo-chia chien-she ts'ung-k'an* 1:27.

1. The President is authorized to establish, in accordance with the constitutional system, an organ for making major policy decisions concerned with the national mobilization and suppression of the Communist rebellion and for assuming administrative control in war zones; and
2. To meet the requirements of national mobilization and the suppression of the Communist rebellion, the President may make adjustments in the administrative and personnel organs of the Central Government, as well as their organizations.

Under these provisions, two agencies established by the "Temporary Provisions" have had considerable impact on the form of government. The National Security Council, which is chaired by the President, in several cases, decided major national policies and then instructed the Executive Yuan to implement or enforce them. The extension of compulsory education from six years to nine years, the extension of the territorial waters from three miles to twelve miles, and the establishment of a two hundred mile economic zone are well-known examples. Therefore, with the establishment of the National Security Council, the President, if he wants, can play a leading role in the national decision-making process. In addition, the Central Personnel Administration of the Executive Yuan, established by the President in accordance with the "Temporary Provisions," has assumed many functions previously held by the Ministry of Personnel of the Examination Yuan. It thus changes the relationship between these two Yuans.

On May 1, 1991, the Temporary Provisions were terminated, but the President's emergency power is retained in modified and more restricted form in Article 7 of the Additional Articles of the ROC Constitution<sup>32</sup> which entered into force on the same day. A President's emergency order shall be submitted to the Legislative Yuan for confirmation within ten days after its issuance. Should the Legislative Yuan withhold confirmation, the said emergency orders shall forthwith cease to be valid.

The National Security Council and the Central Personnel Administration of the Executive Yuan are also retained in Article 9 of the Additional Articles, but their organic laws are to be enacted by the Legislative Yuan by December 31, 1993.<sup>33</sup>

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<sup>32</sup>English translation in *Free China Journal* 8, no. 32 (May 2, 1991): 8.

<sup>33</sup>*Ibid.*

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### Martial Law and Military Trial of Civilians

Because of the Chinese Communists' threat to take over Taiwan by force, martial law (a state of siege) was declared on May 20, 1949.<sup>34</sup> The state of "martial law" in the ROC is, in fact, similar to a "state of siege" in civil law countries and is different from the concept of martial law in common law countries. This point needs further explanation.

The difference lies essentially in the divergent attitudes between the common and civil law systems toward the origin of this emergency measure. "Martial law" emphasizes the suspension of certain normal rules of law, whereas "state of siege" emphasizes the emergency as an effective threat against public safety and order. Thus, the prerequisite for martial rule in the United States is either that the civilian courts are closed or they can no longer perform their functions properly.<sup>35</sup> This condition does not apply to the civil law state of siege, under which the civilian courts may still function and only those crimes against national security, the Constitution, and the public safety and order are under the jurisdiction of military courts. The civil and military powers within the government work side by side in a spirit of cooperation and do not have to be substituted one for the other, as is the case in a common law country.<sup>36</sup> Another major difference should not be overlooked. The executive and/or the legislature in civil law countries has the final word as to whether an emergency situation has arisen; the courts assume this function under the common law.

All these features of the state of siege existed in the Republic of China between 1949 and 1987. The President had the power to initiate the application of martial law, that is, state of siege, although this power is subject to confirmation by the Legislative Yuan. Under Article 39 of the Constitution, the latter, by resolution, might have asked

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<sup>34</sup>Tuan Shao-yen, comp., *Liu-fa p'an-chüeh hui-pien* (Collection of precedents and interpretations on Six Codes) (Taipei: San-min shu-chü, 1963), 1788.

<sup>35</sup>Traditionally, the fact that civil courts are open has precluded the use of martial law. However, the doctrine has undergone a revision, because the nature of modern war has changed; it is still possible for the civil courts to be open even in the actual fighting zone. Therefore, whether the function of the courts is obstructed or not should not be the real criterion. See Charles Warren, "Spies, and the Power of Congress to Subject Certain Classes of Civilians to Trial by Military Tribunal," *American Law Review* 53 (1919): 201. Robert S. Rankin also cited a list of supporting articles on this point; see his *When Civil Law Falls* (Durham, N.C.: Duke University Press, 1939).

<sup>36</sup>For details, see Clinton L. Rossiter, *Constitutional Dictatorship* (Princeton, N.J.: Princeton University Press, 1948), 86-87.

the President to terminate the application of martial law. As a practical matter, the structure and functions of government and the way of life of the people in the ROC were virtually unaffected by the imposition of martial law between 1949 and 1987.

Under martial law, non-military personnel in the ROC were subject to a military trial if they had committed one of the four types of crimes: (1) sedition, (2) espionage, (3) theft, or (4) unauthorized sale or purchase of military equipment and supplies, or theft or damage of public communication equipment and facilities.<sup>37</sup>

In response to popular demand for swift and severe punishment against a rising trend of violent crime, in 1976 the government expanded the scope of military trials to include nine serious offenses such as homicide, robbery, intentionally killing the victim after a rape or robbery, and kidnapping. However, not all these types of cases were automatically placed under military jurisdiction; a decision by the Executive Yuan was required on a case-by-case basis before such crimes were referred to the military courts.<sup>38</sup> After imposition of military trials for these offenses, the number of robbery and snatching cases dropped from 833 in 1975 to 494 in 1976.<sup>39</sup> The deterrent effect no doubt has been realized and, consequently, between 1976 and 1980, there were almost no military trials for robbery or snatching.<sup>40</sup>

Trials in the military courts generally follow the model of the civilian courts. The most controversial aspect is that a judgment must be approved by a commanding officer before delivery.<sup>41</sup> However, this is not only a general practice of military trials in other countries, but, contrary to the American practice that no limitation be imposed,<sup>42</sup> the commanding officer in the ROC may express his disapproval only once.<sup>43</sup> Another problem related to military trials is that a defendant

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<sup>37</sup> Measures of Dividing Cases to Be Tried by the Military Law Organs Themselves and Those to Be Tried by Courts During the Period of Martial Law in the Taiwan Area, promulgated by the Executive Yuan on May 10, 1952, in *Tsui-hsin Liu-fa ch'üan-shu* (Latest edition of Six Codes) (Taipei: San-min shu-chü, 1976), 350.

<sup>38</sup> *Chung-yang jih-pao* (Central Daily News) (Taipei), January 25, 1976.

<sup>39</sup> Research Center of Crime, Ministry of Justice [Legal Affairs], *Fan-tsui chuang-k'uang chi ch'i fen-hsi* (The condition and analysis of crimes) (Taipei: Ministry of Justice [Legal Affairs], 1979), 108-9.

<sup>40</sup> *Chung-yang jih-pao*, January 8, 1980.

<sup>41</sup> Article 133, paragraph 1 of the Military Trial Law, in *Tsui-hsin Liu-fa ch'üan-shu*, 557.

<sup>42</sup> See Edward M. Byrne, *Military Law*, 3rd ed. (Annapolis, Maryland: Naval Institute Press, 1981), 412-15.

<sup>43</sup> Article 133, paragraph 3 of the Military Trial Law, in *Tsui-hsin Liu-fa ch'üan-shu*, 557.

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may be sent to reformatory education because of mitigating circumstances, or because he surrendered himself to the authorities.<sup>44</sup> The maximum period for reformatory education is three years and may not be extended. Upon the expiration of the term, he must be released immediately, although two guarantees may be required to assure his later behavior.<sup>45</sup>

How the military trial of civilians not in active service during the martial law period could be reconciled with Article 9 of the Constitution, which prohibits military trial of civilians, was a question which was never submitted to the Council of Grand Justices of the Judicial Yuan for an authoritative interpretation.

Another restriction on the people during the martial law period was the prohibition on organizing new political parties, though existing parties were allowed to continue to operate. This is contrary to Article 14 of the Constitution which guarantees people's freedom to assembly and association. A plausible justification might be based on Article 23 of the Constitution which authorizes the restriction of the freedoms and rights of the people by law if it is necessary "to avert an imminent crisis, to maintain social order, or to advance public welfare." This issue of prohibiting new political parties was also not submitted to the Council of Grand Justice for an authoritative interpretation.

On July 15, 1987, martial law in Taiwan was lifted by late President Chiang Ching-kuo,<sup>46</sup> and since then no civilians have been subject to a military trial, and the people's freedom to organize new political parties has also been restored.

### Local Self-Government and the Question of the Election of National Elective Bodies

Local self-government began in Taiwan in 1951. All mayors, county magistrates, city or county councils, and the Taiwan Provincial

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<sup>44</sup>Article 8 of the Statute for the Finding and Purging of Spies during the Period of Mobilization for the Suppression of Communist Rebellion, promulgated on June 13, 1950 and amended on December 28, 1954, in *Tsui-hsin Liu-fa ch'üan-shu*, 301.

<sup>45</sup>Article 9 of the Statute for Punishment of Rebellion, promulgated on June 21, 1949 and last amended on July 26, 1958, in *Tsui-hsin Liu-fa ch'üan-shu*, 301.

<sup>46</sup>"Taiwan Ends 4 Decades of Martial Law," *The New York Times*, July 15, 1987, 4. For an analysis of the martial law in Taiwan, see Tao-tai Hsia with Wendy Zeldin, "Laws on Emergency Powers in Taiwan," in *Coping with Crises: How Governments Deal with Emergencies*, ed. Shao-chuan Leng (Lanham, New York and London: University Press of America, 1990), 173-208.

Assembly have since then been periodically elected by the people. However, the Governor of Taiwan and the mayors of Taipei and Kaohsiung, after the mid-1960s when both became special municipalities, have been appointed by the Central Government, and not elected by the people, despite the constitutional provisions to the contrary.

In 1951, the three-year term for members of the Legislative Yuan expired, and all members were due for re-election. However, at that time the Chinese Communists had already controlled the mainland, so no election could be held there. Therefore, by resolution of the Legislative Yuan, the members' terms were extended until a new election could be held. In 1954, the members of the Control Yuan were also due for a new election. Similarly, because the Chinese Communists controlled the mainland, no re-election was possible. Therefore, the question was submitted to the Council of Grand Justices of the Judicial Yuan for guidance. In its Interpretation (*Shih-tzu*) No. 31 rendered on January 29, 1954,<sup>47</sup> the Council of Grand Justices stated that pending a new election, members of the Legislative Yuan and Control Yuan elected in 1948 could continue to serve. In 1954, the delegates to the National Assembly also were due for an election, but it was not possible to hold an election because of the Communist control of the mainland. However, Article 28, paragraph 2 of the Constitution provides that "the term of office of the delegates to each National Assembly shall terminate on the day on which the next National Assembly convenes." Because it was not possible to hold an election calling for the next National Assembly, those delegates elected in 1948 continued to serve.

While through the above constitutional interpretations, the three elective bodies—the National Assembly, the Legislative Yuan, and the Control Yuan—could continue to function; this situation, in fact, prevented the people in Taiwan from moving to a leadership role in the national elective bodies, and it therefore came under increasing public criticism.

In 1966, a provision was added to the Temporary Provisions of the Constitution authorizing the President to "initiate and promulgate for enforcement regulations providing for elections to fill, according

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<sup>47</sup>*Ssu-fa yüan ta-fa-kuan hui-i chieh-shih hui-pien* (Collection of interpretations of the Council of Grand Justices of the Judicial Yuan) (Taipei: Secretariat of the Judicial Yuan, 1974), 53.



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to law, those elective offices at the Central Government level which have become vacant for legitimate reasons, or for which additional representation is called because of population increases, in areas that are free and/or newly recovered.”<sup>48</sup> In 1969, a supplementary national election was held to elect fifteen members to the National Assembly and eleven members to the Legislative Yuan. The Taiwan Provincial Assembly also elected two members to the Control Yuan. These new members were to serve “indefinitely”; that is, they enjoyed lifetime tenure.

The above measure was hardly a reasonable response to the popular demand for more democracy in Taiwan. Therefore, on March 17, 1972, the National Assembly again added another provision to the Temporary Provisions as follows:<sup>49</sup>

6. During the period of national mobilization and the suppression of Communist rebellion, the President may, in accordance with the following stipulations, initiate and promulgate for enforcement regulations providing for elections to strengthen elective offices at the Central Government level without being subject to the restrictions prescribed in Article 26, Article 64 or Article 91 of the Constitution.

(1) In free areas, additional members or representatives may be elected to all elective offices at the Central Government level by elections to be held at established times. The President may initiate regulations for the selection of members of the Legislative Yuan and the Control Yuan who were to have been elected from among Chinese nationals residing overseas but whose election could not be carried out because of the actual situation.

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(3) Representatives additionally elected to the elective offices at the Central Government level shall carry out the same functions as those elected previously. The new delegates to the National Assembly elected for additional representation shall stand for re-election every six years; those of the Legislative Yuan, every three years; and those of the Control Yuan, every six years.

In the same year, an election was held, and fifty-three delegates to the National Assembly, thirty-one members (plus fifteen appointed seats for overseas Chinese) of the Legislative Yuan, and ten members (plus five appointed members from overseas Chinese) of the Control Yuan were elected. They were subject to re-election every six years (National Assembly and Control Yuan) or every three years (Legislative

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<sup>48</sup>*China Yearbook, 1970-71* (Taipei: China Publishing Co., n.d.), 720-21.

<sup>49</sup>*China Yearbook, 1972-73* (Taipei: China Publishing Co., n.d.), 747-48.

Yuan). These elections came to be known as "supplementary elections." In 1986, eighty-four new delegates were elected to the National Assembly, and in 1989, seventy-two new members (plus twenty-nine appointed seats from overseas Chinese) were elected to the Legislative Yuan. In 1987, twenty-two new members (plus ten appointed seats from overseas Chinese) were elected to the Control Yuan by the Taiwan Provincial Assembly and Taipei and Kaohsiung City Councils.

On February 3, 1989, the President promulgated a law adopted by the Legislative Yuan for voluntary retirement of those members of the three elective bodies who were formerly elected on the Chinese mainland in 1948 and in Taiwan in 1969.<sup>50</sup> On June 21, 1990, the Council of Grand Justices rendered Interpretation (*Shih-tzu*) No. 261 which states that all members of the three elective bodies who were elected in 1948 and 1969 must resign from their offices by December 31, 1991 and that new elections should be held for these bodies.<sup>51</sup> Thus, from January 1, 1992, all members of the National Assembly, the Legislative Yuan, and the Control Yuan will be periodically elected in Taiwan.

### Reduction of Tension in the Taiwan Strait and Constitutional Reform

Before early 1980, the policy of the Chinese Communist government toward Taiwan was to use force to "liberate Taiwan" at an appropriate time. This policy was even explicitly stated in the Preamble of the Constitution of the People's Republic of China (PRC) adopted on March 5, 1978.<sup>52</sup> Under such a constant military threat, the ROC government considered that it was necessary to restrict people's freedoms for national security reasons. However, since the early 1980s, mainland-Taiwan relations have significantly changed.

On January 1, 1979, when diplomatic relations were established between the United States and the PRC, the Standing Committee of the PRC's National People's Congress (NPC) sent a "Message to Compatriots in Taiwan"<sup>53</sup> calling for "unification" of Taiwan with

<sup>50</sup>Text in *Fa-wu-pu kung-pao* (Gazette of the Ministry of Justice [Legal Affairs]), no. 104 (February 28, 1989): 15-17.

<sup>51</sup>Text in *Fa-ling yüeh-k'an* (The Law Monthly) 40, no. 9 (September 1, 1990): 21-24.

<sup>52</sup>*Hsien-fa tzu-liao hsüan-pien* 1:305.

<sup>53</sup>"N.P.C. Standing Committee Message to Compatriots in Taiwan," *Beijing Review* 22, no. 1 (January 5, 1979): 16-17.

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the mainland. It said that the PRC leaders would take present realities in Taiwan into account in accomplishing the “great cause of reunifying the motherland,” would respect the status quo on Taiwan and the opinions of the people in all walks of life there, and would adopt reasonable policies and measures in settling the question of reunification so as to avoid causing any losses to the people of Taiwan. It also called for establishing “three links”—mail, trade, and air and shipping services; and “four exchanges”—relatives and tourists, academic groups, cultural groups, and sports representatives—with Taiwan as a first step toward the ultimate goal of reunification.

On September 30, 1981, Marshal Yeh Chien-ying (Ye Jianying), then chairman of the NPC Standing Committee and de facto head of state of the PRC, made a specific nine-point proposal to Taiwan on unification. The proposal offered Taiwan “a high degree of autonomy as a special administrative region” after unification with the PRC. Taiwan could also retain its armed forces. The PRC also renewed its 1979 call for establishing “three links” and “four exchanges” with Taiwan.<sup>54</sup> This proposal set forth the basic principles of the Chinese Communists’ unification policy toward Taiwan. While the PRC has not ruled out the use of force against Taiwan, the increased contacts through trade, investment, and travel have greatly reduced the tension in the Taiwan Strait. Under this more relaxed atmosphere, it was only natural for the general public in Taiwan to demand the full implementation of the Constitution of the Republic of China and further demand the ROC government make necessary amendments to the Constitution for its application to the Taiwan area.

On July 15, 1987, late President Chiang Ching-kuo lifted martial law, which also ended the ban on organizing new political parties. At the same time, the ROC also announced the relaxation of foreign exchange controls, so that anyone could remit up to a total of US\$5 million abroad in a year. On December 25, 1987, President Chiang announced a plan to reform parliamentary bodies at the annual meeting of the National Assembly. Under that plan, all members of parliamentary bodies would be periodically elected in Taiwan within a few years.

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<sup>54</sup>“Chairman Ye Jianying’s Elaboration on Policy Concerning Return of Taiwan to Motherland and Peaceful Reunification,” *Beijing Review* 24, no. 40 (October 5, 1981): 10.

Unfortunately, Chiang passed away on January 13, 1988 before he could implement this reform. Dr. Lee Teng-hui, who succeeded to the presidency on the same day, pledged to carry out Chiang's policy. Under Lee's leadership, the Central Standing Committee of the ruling Chinese Nationalist Party approved the reform plan on February 3, 1988. At the Thirteenth National Congress of the Party held in July 1988, Lee was elected the Party Chairman. The new Party Platform, which would serve as the government's policy guidelines for the next four years, stresses the continuation of the democratization and liberalization process in politics and the economy.

On January 23, 1989, the President promulgated the Civil Organizations Law adopted by the Legislative Yuan, which among others, sets rules for the formation of new political parties.<sup>55</sup> Thus, it marks a transition of the ROC's political system from an essentially authoritarian one-party state to a democratic, competitive, multiparty system. On February 3, 1989, the Election and Recall Law<sup>56</sup> was also revised to lift many restrictions on campaign activities.

On the question of reform of the Legislative Yuan, the Control Yuan, and the National Assembly, a voluntary retirement law was adopted for those members who were formerly elected on the Chinese mainland in 1948 and in Taiwan in 1969.

On March 21, 1990, after learning he was elected to a six-year term by the National Assembly, President Lee Teng-hui said that the government would hold a National Affairs Conference, and would invite legislators, scholars, experts, industrial and business leaders, and journalists to attend in order to develop a consensus on such major issues as constitutional reform and the policy toward the mainland.

In his inaugural address entitled "Opening a New Era for the Chinese People," delivered on May 20, 1990,<sup>57</sup> President Lee announced that, "with the changing domestic and international situation and the increasingly ardent desire of the people for democratic rule of law," he hoped that "a termination of the period of mobilization for the suppression of Communist rebellion" could be declared in the shortest possible period of time. In other words, he was willing to give up his

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<sup>55</sup>*Fa-wu-pu kung-pao*, no. 104 (February 28, 1989): 6-10.

<sup>56</sup>Text of the revised provisions in *ibid.*, 10-15. The Law was revised again on August 2, 1991 to further liberalize restrictions on campaigning. For text, see *Fa-ling yüeh-k'an* 41, no. 10 (October 1, 1991): 18-23.

<sup>57</sup>Text in *Republic of China Yearbook, 1990-1991*, 722-24.

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extraordinary power granted to the President under the “Temporary Provisions” and return to normal constitutional rule.

Moreover, he also indicated his willingness to make necessary revisions of the Constitution to strengthen democracy in the ROC. He stated:

Based on the many years of experience we have accumulated in implementing our Constitution and on the needs arising from the current national environment, forward-looking and necessary revisions will be made to portions of the Constitution concerning such matters as the parliamentary organs of the central government, the system of local government, and government organization to provide the Chinese people with a legal code that is in accord with the trends of our times, and to establish a great model of political democracy for all times.

In order to show his sincerity to carry out these reforms, he specifically stated that he hoped the reform could be completed within a period of two years.

### The National Affairs Conference

The National Affairs Conference (NAC) was held from June 28 to July 4, 1990 in Taipei.<sup>58</sup> It was unprecedented in the political history of the ROC because its participants included people holding divergent political views, ranging from those who advocate Taiwan independence to those who are in favor of unification with the Communist-controlled mainland.

As only a limited number of people could have been invited to attend the NAC, the ROC government consulted a wide range of people to seek their opinions before the conference was held. A total of 119 discussion meetings were held in Taiwan and abroad with more than 13,000 people attending.<sup>59</sup> A National Affairs Box was set up at a Taipei post office and received 2,187 letters, and a National Affairs Hotline received 1,180 telephone calls.<sup>60</sup>

Two public opinion polls were conducted to identify the attitudes of social elites and the general public toward constitutional reform. The results were released on June 24, 1990, a few days before the conference.<sup>61</sup>

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<sup>58</sup>For details, see *Kuo-shih hui-i shih-lu* (Faithful record of the National Affairs Conference), 3 vols. (Taipei: Secretariat of the National Affairs Conference, 1990).

<sup>59</sup>*Ibid.* 1:9-10.

<sup>60</sup>*Ibid.*, 8.

<sup>61</sup>*Ibid.* 3:3007-62.

The social elites poll, conducted between May 17 and June 15, 1990, involved interviewing 284 college professors, 35 people's representatives, 156 entrepreneurs, 54 mass media workers, and 54 responsible officers of civic organizations relating to social movements. More than 86 percent of the elites polled considered that there is a constitutional crisis in Taiwan, while only 8.9 percent did not think so, with 2.6 percent expressing other opinions and 2.1 percent expressing no opinion. On the question of how to strengthen the constitutional system, 54 percent expressed the view that this should be done through amending the Constitution, 19 percent considered that full implementation of the Constitution should be sufficient, 12.2 percent were in favor of enacting a Basic Law to replace the present Constitution, 11.1 percent were in favor of enacting a new Constitution, 2.7 percent expressed other opinions, and 1 percent expressed no opinion. With respect to the question of who should exercise the power of amending the Constitution, 70.3 percent considered that it should be the National Assembly after the resignation of all life-tenure members who were elected in 1947 and after its other members were re-elected in Taiwan, and only 9.6 percent considered that the National Assembly in its present composition (that is, at least 80 percent are life-tenure members elected in 1947) should exercise the power of amending the Constitution. On the question of possible Chinese Communist response to the constitutional reform, the interviewed elites considered that full implementation of the Constitution would raise the least suspicion of the Chinese Communists, followed by amending the Constitution or enacting a Basic Law, while enacting a new Constitution would cause high suspicion from the Chinese Communists. An interesting question relating to constitutional reform is the cost of social stability as a result of choosing different methods of constitutional reform. Interviewed social elites considered that amending the Constitution would have the least effect on social stability, followed by full implementation of the Constitution and enacting a Basic Law. Enacting a new Constitution would have a high cost on social stability. They also considered that amending the Constitution would be most appropriate in mitigating the dispute over unification and independence, while enacting a new Constitution would be the least appropriate one.

The poll of the general public was conducted through telephone interviews of 1,068 people. In sharp contrast to the social elites' opinion, 45 percent considered that there is no constitutional crisis in Taiwan, while 43.7 percent considered that there is such a crisis. On the question of which problems the government should pay special

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attention to in carrying out the constitutional reform, 93.1 percent designated the reform's impact on social stability as the most important one, followed by 83.1 percent on the timetable for reform, 67.2 percent on achieving a consensus and compromise with the Democratic Progressive Party (DPP), and 52.6 percent on taking into consideration the response of the Chinese Communists. Similar to the social elites' opinion, 57.8 percent of the people interviewed considered that constitutional reform should be carried out by amendment, followed by 15.6 percent who advocate full implementation of the Constitution, and 11.7 percent who would enact a new Constitution.

On June 21, 1990, a week before the opening of the NAC, the Council of Grand Justices of the Judicial Yuan rendered its Interpretation (*Shih-tzu*) No. 261, which states that all life-tenure representatives in the parliamentary bodies—the National Assembly, the Legislative Yuan, and the Control Yuan—should resign by December 31, 1991.<sup>62</sup> This view was accepted by the majority of the participants of the NAC, though some participants preferred an earlier resignation date. There was also a general consensus on favoring the direct election of the governor of Taiwan Province and the mayors of Taipei and Kaohsiung municipalities. As a matter of fact, the Constitution has already provided for such an election.

A high decree of consensus was reached on the ROC's policy toward the mainland and the need to enact a law to regulate relations between Taiwan and the mainland in such areas as trade, investment, travel, and culture. Most considered that the ROC government should clarify its present seemingly inconsistent mainland policy and liberalize functional exchanges with the mainland. The government should also consider beginning functional and nonpolitical negotiations with the Chinese Communists through an "intermediate body" with authority delegated by the government.

On the constitutional reform issue, all participants agreed that the "Temporary Provisions Effective During the Period of Mobilization for the Suppression of Communist Rebellion," which granted extraordinary power to the President and were annexed to the Constitution, should be terminated as soon as possible. They were divided, however, on the issue of how to achieve constitutional reform. The majority of the participants considered that reform should be carried

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<sup>62</sup>See note 51 above.

out by amending the Constitution through the procedure provided in the Constitution. A minority would have liked to enact a new Constitution. The difficulty in accepting this view is that the President does not have the constitutional power to abrogate the present Constitution and enact a new one. Moreover, the ROC Constitution, enacted in 1947 when the ROC government was on the mainland, is the symbol of the "one-China" principle. To enact a new Constitution just applicable to Taiwan would undermine that principle and imply that Taiwan is independent. Because the Chinese Communists have repeatedly warned that they will not tolerate Taiwan independence and will use force to suppress independence, enacting a new Constitution will increase tensions in the Taiwan Strait.

The majority of participants considered that the present form of electing the President, that is, the National Assembly may elect anyone it likes to serve as the President without consulting the people's opinion, should be reformed. Almost all participants agreed that the President should be "elected by the people," but they were divided on whether the President should be directly elected by the people or by a system similar to that of the United States where voters cast ballots for electoral college delegates representing the electorate's views as proxies. Supporters of this view pointed out that the direct election of the President on Taiwan might give people the impression that the President is elected only by the people of Taiwan and thus imply Taiwan independence. An electoral college system may include some national and overseas Chinese seats apportioned according to the party preference of Taiwan voters.

### **The Process and Problems in Implementing Constitutional Reform**

The participants of the NAC generally agreed that the Constitution should be amended by an organ with a basis in public opinion, that is, whose members are elected by the people for a fixed term. Therefore, the National Assembly under its composition at that time, with more than 80 percent life-tenure members elected in 1947, was inappropriate for exercising the function of amending the Constitution. Only when all members of the National Assembly had been elected in Taiwan for a fixed term should the Assembly begin to amend the Constitution. This, however, was not due to happen until late 1992 when the Assembly was scheduled for re-election. The complicated legal problems involved need explanation.

At that time, the National Assembly, in addition to life-tenure



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members, included eighty members elected for six-year terms in Taiwan and their terms were not due to expire until December 1992. However, according to Interpretation (*Shih-tzu*) No. 261 of the Council of Grand Justices of the Judicial Yuan, all life-tenure members of the Assembly should resign by December 31, 1991. If this decision was implemented, there would be only eighty members in the National Assembly in 1992. Legally, they would have authority to amend the Constitution, but politically, they would not be advised to do so because they were elected in 1986, and at that time the people did not give the members the mandate to amend the Constitution. In view of this, the government was considering holding an election in 1991 to elect 291 new members to the Assembly who would begin to serve on January 1, 1992. Under that arrangement, in 1992 a rejuvenated National Assembly would have 375 members<sup>63</sup> to amend the Constitution, all of them elected in Taiwan. This sounds like a logical solution, but the problem was whether the President had the legal authority to move the election date from December 1992 to December 1991 or even earlier, thus shortening the term of eighty members of the Assembly who were elected in 1986. A possible flimsy legal basis for taking this action would be to invoke the emergency power under Article 1 of the "Temporary Provisions." However, the "Temporary Provisions" were abolished on May 1, 1991, so this approach was not possible.<sup>64</sup>

Moreover, some of the members of the National Assembly, the Legislative Yuan, and the Control Yuan at that time had been elected for a fixed term under Article 6 of the "Temporary Provisions."<sup>65</sup>

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<sup>63</sup>The ROC National Security Council proposes that in the future the total number of representatives of the National Assembly should be 375, all of them serving six-year terms.

<sup>64</sup>Even if it were not abolished, both the Legislative Yuan and the National Assembly may rescind an emergency measure taken by the President.

<sup>65</sup>See note 49 above and accompanying text. Article 6 of the Temporary Provisions provides:

During the period of national mobilization for the suppression of Communist rebellion, the President may, in accordance with the following stipulations, initiate and promulgate for enforcement regulations providing for elections to strengthen elective offices at the Central Government level without being subject to the restrictions prescribed in Article 26, Article 64, or Article 91 of the Constitution:

(1) In free areas, additional members of the National Assembly, the Legislative Yuan, and the Control Yuan may be added through regular elections. Members of the Legislative Yuan and Control Yuan that must be elected by Chinese citizens living abroad who are unable to hold elections shall be chosen according to regulations established by the President of the Republic.

The termination of the "Temporary Provisions" on May 1, 1991, as announced by the President, undermined the legal basis for these members to continue to serve their terms until December 1992. If an election had been held according to the provisions of the ROC Constitution, and not on the "Temporary Provisions," only thirty-nine members would have been elected to the National Assembly<sup>66</sup> and twenty-seven to the Legislative Yuan.<sup>67</sup>

Another possibility was to adopt a two-stage constitutional reform, that is, to convene, immediately prior to the termination of the "Temporary Provisions," an extraordinary session of the National Assembly to amend only those provisions relating to elections in the Constitution and those Temporary Provisions relating to the President's emergency power and the National Security Council. Additional constitutional reform could be left for the next session of the National Assembly, which would be composed of members entirely elected in Taiwan. This was the approach later adopted by the ruling Nationalist Party and implemented in April 1991.

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(2) Representatives elected to the National Assembly, Legislative Yuan, and Control Yuan in the first elections were chosen through popular vote by the people of the entire nation. These representatives exercise their powers of office in accordance with law; the same principle applies to the representatives elected to fill vacancies or provide additional representation.

Elections for the National Assembly, Legislative Yuan, and Control Yuan shall be held on the Chinese mainland one by one, as each area is recovered.

(3) Additional members elected to serve in the National Assembly, Legislative Yuan, and Control Yuan, shall exercise the same powers of office in accordance with law as the members elected in the first elections.

Additional members of the National Assembly shall stand for re-election every six years; members of the Legislative Yuan, every three years; and members of the Control Yuan, every six years.

<sup>66</sup>Article 26 of the Constitution provides:

The National Assembly shall be composed of the following delegates:

1. One delegate shall be elected from each *hsien* [county], municipality, or area of equivalent status. In case its population exceeds 500,000, one additional delegate shall be elected for each additional 500,000. Areas equivalent to *hsien* or municipalities shall be prescribed by law;

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<sup>67</sup>Article 64 of the Constitution provides:

Members of the Legislative Yuan shall be elected in accordance with the following provisions:

1. Those to be elected from the provinces and by the municipalities under the direct jurisdiction of the Executive Yuan shall be five for each province or municipality with a population of not more than 3,000,000; one additional member shall be elected for each additional 1,000,000 where the population exceeds 3,000,000;

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On April 23, 1991 the Extraordinary Session of the National Assembly adopted Additional Articles of the Constitution. On April 30, 1991, President Lee announced the entry into force of the above Additional Articles and the termination of the "Period of Mobilization for the Suppression of Communist Rebellion," beginning on May 1, 1991.

### The Additional Articles of the Constitution of the Republic of China

Additional Articles of the Constitution of the Republic of China<sup>68</sup>  
number only ten and their contents are summarized below:

1. *Membership in the National Assembly, the Legislative Yuan and the Control Yuan:* According to Articles 1 to 3, the seats of the three elective bodies are allocated as follows:

(National Assembly)

- (1) Two members shall be elected from each Special Municipality, each county or city in the free area. However, where the population exceeds 100,000 persons, one member shall be added for each additional 100,000 persons.
- (2) Three members each shall be elected from lowland and highland aborigines in the free area.
- (3) Twenty members shall be elected from Chinese citizens living abroad.
- (4) Eighty members shall be elected from one nationwide constituency.

(Legislative Yuan)

- (1) Two members shall be elected from each province and each Special Municipality in the free area. Where the population exceeds 200,000 persons, however, one member will be added for each additional 100,000 persons; and where the population exceeds one million persons, one member will be added for each additional 200,000 persons.
- (2) Three members each shall be elected from lowland and highland aborigines in the free area.
- (3) Six members shall be elected from Chinese citizens living abroad.
- (4) Thirty members shall be elected from one nationwide constituency.

(Control Yuan)

- (1) Twenty-five members shall be elected from Taiwan Province of the free area.
- (2) Ten members shall be elected from each Special Municipality in the free area.
- (3) Two members shall be elected from Chinese citizens living abroad.
- (4) Five members shall be elected from one nationwide constituency.

However, if an election district has between five and ten seats, one seat must be reserved for a woman. The same rule is applied to a party winning between five and ten seats representing overseas Chinese or one nationwide constituency. Where the number exceeds ten, one seat out of each additional ten must be reserved for a woman.

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<sup>68</sup>English translation in source cited in note 32 above.

Elections for members of the National Assembly and Legislative Yuan shall be conducted by direct popular votes, but members representing Chinese citizens living abroad and one nationwide constituency shall be elected by party-list proportional representation (Article 4). Under the above stated amendment to the Constitution, there will be approximately 327 members of the National Assembly, 161 for the Legislative Yuan, and 52 of the Control Yuan.

2. *Transitional Arrangement.* Articles 5 and 6 set the date for new elections. The National Assembly election shall be held before December 31, 1991 and the elections for the Legislative Yuan and Control Yuan shall be held before January 31, 1993. The President should convene an extraordinary session of the newly elected National Assembly within three months after the election. Those members of the National Assembly who were elected in Taiwan for a six-year term in 1986 may continue to serve until January 31, 1993. If the revision of laws originally in effect solely during the Period of National Mobilization for the Suppression of Communist Rebellion is not completed by the termination of the Period of National Mobilization for the Suppression of Communist Rebellion, these laws shall remain in effect until July 31, 1992 (Article 8).
3. *President's Emergency Power, National Security Council, and Central Personnel Administration.* These topics have been discussed in the earlier parts of this paper.<sup>69</sup>
4. *Mainland-Taiwan Relations.* The relationship of rights and obligations between the people of the mainland China area and those of the free area, and the disposition of other affairs, shall be specially regulated by law (Article 10).

### The December 21, 1991 Second National Assembly Election

On May 1, 1991, President Lee announced the termination of the "Period of Mobilization for the Suppression of Communist Rebellion" and the "Temporary Provisions" of the Constitution. At the same time, he announced the entry into force of the Additional Articles to the Constitution adopted by the Extraordinary Session of the National Assembly. According to Article 1 of the Additional Articles, 225 members are to be elected to the Assembly and an additional 80 nationwide members and 20 overseas members are to be allocated according to the percentage of popular votes received by political parties which constitute at least 5 percent of all popular votes. Articles 5 and 6 set the date for the new election to the Assembly for not later than December 31, 1991, and the President is instructed to convene an extraordinary session of the newly elected National Assembly within three months after the election in order to revise the

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<sup>69</sup>See notes 32 and 33 above and accompanying text.

## CONSTITUTIONAL DEVELOPMENT AND REFORM IN THE ROC 33

Constitution. The election date was later set for December 21, 1991.

During the campaign for the National Assembly election, the DPP advocated Taiwan independence while the KMT called for “reform, stability, and prosperity” and ultimate unification with the Chinese mainland. It also warned the public that supporting the DPP’s cause can only lead Taiwan on a confrontation course with the Chinese Communists, which would only bring disaster to all the people of Taiwan.

The result of the election was a disaster for the DPP. A total of nearly 9 million voters went to the polls in 58 election districts, and the KMT received 71.17 percent of the popular votes and 179 seats, while the DPP received only 23.94 percent and 41 seats. With 60 nationwide and 15 overseas seats to be allocated according to the popular votes received, the KMT has a total of 254 seats, while the DPP has 20 nationwide and 5 overseas seats for a total of 66 seats. Because there are 78 members of the National Assembly (KMT has 64, DPP has 9, and other parties have 5) who were elected in 1986 and they will also join the Second National Assembly to amend the Constitution, the total members of the National Assembly will be 403. The KMT has 318 members, that is, 78.91 percent of the total membership.<sup>70</sup> According to Article 174 of the Constitution, an amendment to the Constitution must be adopted by a resolution of three-fourths of the members of the National Assembly at a meeting having a quorum of two-thirds of the entire Assembly, the KMT thus has more than three-fourths of the votes in the National Assembly to amend the Constitution.

However, things did not go so well for the KMT in the Second National Assembly convened by the President on March 20, 1992, because of the KMT’s internal dispute over the issue of how the President should be elected by the people—whether by direct election or by proxy vote.

### The Issue of How to Elect the President

As stated earlier, during the 1990 National Affairs Conference, the participants were divided over the issue of how to elect the President. During the December 1991 election campaign, the majority of

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<sup>70</sup>Susan Yu, “ROC Voters Give KMT Whopping Mandate,” *Free China Journal* 8, no. 98 (December 24, 1991): 1.

the KMT candidates campaigned on a platform supporting an electoral college system, where voters cast ballots for electoral college delegates representing the electorate's view as proxies. On February 15, 1992, the KMT Constitutional Amendment Group, after several hundred consultative meetings, made a preliminary decision to propose the adoption of the electoral college system to the KMT Central Standing Committee, scheduled to meet in early March 1992. If approved, then the proposal would be submitted to the Third Plenum of the Central Committee scheduled for mid-March 1992.<sup>71</sup>

All appeared to go well up to this moment. However, at the KMT Central Standing Committee meeting held on March 9, 1992, instead of only the proposal for an electoral college system to elect the President, a proposal for the direct election of the President was also presented to the meeting, thus triggering a sharp debate among the participants.<sup>72</sup> The Central Standing Committee could not reach an absolute majority on this issue, so it decided to present both proposals to the Third Plenum of the Thirteenth Central Committee for a final decision.

At the Central Committee meetings held on March 14-16, 1992, marathon debates took place. Those in favor of an electoral college system, usually referred to as the "direct election by delegation" faction, argued that a President elected by a direct popular vote in Taiwan could give the impression of being a "President of Taiwan," thus implying Taiwan independence. Moreover, a system based on direct popular votes would exclude overseas Chinese participation in the election process. Some KMT members opposed this method of electing the President because the opposition DPP was on record as favoring such a constitutional change. Those in favor of direct election of the President pointed out that such a system would be in keeping with recent popular trends demonstrating the people's desire to have more participation in the government.<sup>73</sup>

The debate became so divisive, the Central Committee halted the debate and decided to adopt a compromise formula to defer the issue. The final proposal approved by the Central Committee provides that the President and Vice President will be elected by residents of free

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<sup>71</sup> *Chung-yang jih-pao*, international edition, February 17, 1992, 1.

<sup>72</sup> See *Shih-chieh jih-pao* (World Journal) (New York), March 10, 1992, 28.

<sup>73</sup> Susan Yu, "No Decision on Electing ROC President," *Free China Journal* 9, no. 18 (March 17, 1992): 1.

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areas of the Republic of China in such a way as to reflect the public will.<sup>74</sup> In fact, it makes no decision on the method for electing the President.

### **The Adoption of Additional Amendments to the Constitution of the Republic of China**

On March 20, 1992, the extraordinary session of the Second National Assembly was convened by President Lee Teng-hui. Because the question of how to elect the President was so divisive, President Lee Teng-hui, who is also Chairman of the KMT, decided to postpone the resolution of this issue. In a March 25, 1992 speech to 318 KMT members of the National Assembly, Lee said that he would call an extraordinary session of the National Assembly before May 20, 1995, for a final decision on this issue.<sup>75</sup>

On May 27, 1992, the extraordinary session of the Second National Assembly adopted eight additional articles (Articles 11 to 18) to the Constitution of the Republic of China which will be applicable to the Taiwan area before national unification. The contents of these articles are summarized below:<sup>76</sup>

1. *President and Vice President:* According to Article 12, both the President and the Vice President shall be elected by the entire electorate in the free area of the Republic of China; the method of election shall be decided by an extraordinary session of the National Assembly to be convoked by the President before May 20, 1995. Their terms in office are shortened to four years, and they may be reelected for a second term. With respect to the question of participation of overseas Chinese in the election of the President and the Vice President, Article 18, paragraph 7, vaguely provides that the state "shall accord to Chinese nationals residing overseas protection of their rights to political participation."
2. *The National Assembly:* According to Article 11, the terms of delegates to the National Assembly shall be shortened to four years. The President shall convoke an extraordinary session of the National Assembly annually. When the Assembly is in session, it shall hear a report on the state of the nation by the President, discuss national affairs, and offer counsel.
3. *The Control Yuan:* Members of the Control Yuan were formerly elected by the Taiwan Provincial Assembly and Taipei and Kaohsiung City Councils. There were strong criticisms of the bribery scandals surrounding those elec-

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<sup>74</sup>Ibid.

<sup>75</sup>Tammy C. Peng, "3-Year Delay in Vote on Electing President," *Free China Journal* 9, no. 21 (March 27, 1992): 1.

<sup>76</sup>For translation of the text of these articles, see *Free China Journal* 9, no. 44 (June 23, 1992): 7.

tions. Therefore, Article 15 abolished the election for members of the Control Yuan and converted this Yuan into a semi-judicial organ. From 1993 on, members will be appointed by the President with the consent of the National Assembly. Members of the Control Yuan must be beyond party affiliation and independently exercise their powers, discharging their responsibilities in accordance with the law.

4. *Judicial Yuan and the Dissolution of Unconstitutional Parties:* Article 13 makes some minor revisions to the organization and function of the Judicial Yuan. The President, Vice President, and the Grand Justices of the Judicial Yuan shall be appointed by the ROC President with the consent of the National Assembly. Formerly, members of the Judicial Yuan were appointed with the consent of the Control Yuan, which was indirectly elected by the people through their Provincial Assemblies or Councils of Cities under direct administration of the Executive Yuan. Because the Control Yuan now is no longer a people's representative organ, but rather a semi-judicial organ, there is no reason for the Control Yuan to retain the power of consent to the appointment of judicial officials.

A new function is entrusted to the Grand Justices: the adjudication of issues involving unconstitutional political parties. Under the existing Civil Organizations Law, the Party Review Committee of the Executive Yuan may decide to dissolve a political party if said party advocates Communism or splitting national territory. This part of the law was criticized by some commentators as unconstitutional, because it appears to infringe without due process upon the people's right to association. Article 13, therefore, shifted this power to dissolve political parties to the Grand Justices of the Judicial Yuan. They will form a Constitutional Tribunal to adjudicate matters relating to the dissolution of unconstitutional political parties. A political party is defined as unconstitutional, "if its goals or activities jeopardize the existence of the Republic of China as a free, democratic constitutional order."

5. *Examination Yuan:* Because the Control Yuan is no longer a people's representative organ, its power to give consent to the ROC President's appointment of the President, Vice President, and members of the Examination Yuan is shifted to the National Assembly, as provided in Article 14. Moreover, in the first stage of Constitutional reform, Article 9, paragraph 2, of the Additional Articles authorized the Executive Yuan to establish the Personnel Administration, therefore, the Examination Yuan's function is now limited to "all legal matters relating to the employment, discharge, performance evaluation, scale of salaries, promotion, transfer, commendation and award for civil servants." In other words, the execution and implementation of these functions are now transferred to the Personnel Administration of the Executive Yuan.
6. *Local Self-Government:* Article 17 provides a legal basis for the Legislative Yuan to enact a law permitting the direct election of the Governor of a province, that is, Taiwan Province. At present, the Governor of Taiwan is appointed by the President with the consent of the Taiwan Provincial Assembly.
7. *Fundamental National Policy:* Article 18 adds certain items to fundamental national policy, which is the subject of Chapter XIII (Articles 137-169) of the Constitution. Among these items are environmental protection, the elimination of sexual discrimination, safeguarding personal safety for women, the right of handicapped and disabled persons to insurance, and legal protection for aborigines and other groups.



### Future Prospects

The second stage of constitutional amendments has raised several important issues regarding the operation of the Republic of China's governmental system. The first issue is if the extraordinary session of the National Assembly to be convoked by the President before May 20, 1995 cannot reach an agreement on the method of electing the President (either by electoral college or by direct election), then how the next President of the Republic will be elected. This deadlock is possible because, according to Article 174 of the Constitution, any constitutional amendment can only be adopted by a resolution of three-fourths of the members of the National Assembly at a meeting having a quorum of two-thirds of the entire Assembly. If this happens, the logical solution to this issue is to refer the question to the Council of Grand Justices of the Judicial Yuan for an authoritative interpretation. However, the Council may also deadlock on this issue, because any constitutional interpretation from the Council is required to be adopted by a resolution of three-fourths of the members of the entire Council.<sup>77</sup>

Second, assuming that the 1995 extraordinary session adopts the method of direct election of the President, there remains the question of whether the President should be elected by absolute majority or by simple majority. In a report submitted to the KMT Central Standing Committee on the election of the President, the proposal for an electoral college and the proposal for direct election both adopt the simple majority rule. Therefore, in the future, there is a possibility that a minority President will be elected in the Republic of China, thus undermining the political stability of the country.

Third, according to Article 11 of the Additional Articles, the National Assembly is given the authority, at its annual meeting, to hear a report on the state of the nation by the President, discuss national affairs, and offer counsel. Since the Assembly has the power to amend the Constitution, whether it will use that power to expand its role in the future is a question that remains to be seen. If so, whether such an unprecedented bicameral parliamentary system will work is at least questionable.

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<sup>77</sup>See Article 13 of the Law on the Council of Grand Justices of the Republic of China, promulgated on July 21, 1958.

In view of the above analysis, although the future of constitutionalism in the Republic of China appears largely positive, there exist some important questions and areas of potential conflict involving the implementation of the new constitutional amendments. Be that as it may, looking back at constitutional development in China, never before in China's history have the Chinese people paid so much attention to constitutional issues as the Chinese people in Taiwan do today. Constitutionalism, which was introduced to China early in this century, appears now to be an integral part of the political process in the Republic of China on Taiwan. If this trend continues, which is quite likely, it will have a significant impact on constitutional development on the Chinese mainland.

## Documents

### 1. Opening a New Era for the Chinese People

Inaugural Address  
The Eighth President of the Republic of China  
(English Translation)

LEE Teng-hui  
May 20, 1990

*My Dear Countrymen and Distinguished Guests:*

The eighth session of the National Assembly elected me, Lee Teng-hui, to the eighth presidential term of the Republic of China. Today I, together with Vice President Li Yuan-zu, will take my oath of office in accordance with the stipulations of our Constitution.

The entire people have charged me with a solemn office. With such a heavy responsibility on my shoulders, I will naturally do my utmost to adhere to the terms of the presidential oath, devoting my full efforts to protecting the country and enhancing the welfare of the people.

A look at the current world situation reveals that we now find ourselves in a great era of rapid change. The pursuit of political democracy, economic liberalization, and world peace by all of humanity is now a raging, irresistible tide that will inevitably destroy the shackles of systems that refuse to change with the times and the stockades of closed, totalitarian ideologies. Accordingly, the international situation has progressed from antagonism to conciliation. We, the Chinese people, naturally cannot exclude ourselves from this massive tide. Rising up to take advantage of this opportunity and lay a comprehensive and lasting foundation for the future of the Chinese people is the common responsibility of the 1.2 billion Chinese at home and abroad. It is also the duty of the people on our bastion of national revival, civilian and military alike, to lead the way with great wisdom, determination, and solidarity, based on our many years of experience and achievements in implementing political democracy and an economy that benefits the people.

Accepting the people's high expectations and trust in these extraordinary times, I feel the weight of my responsibility is multiplied many times over. I earnestly hope that all compatriots continue to offer your support and encouragement, so that over the coming six years of this presidential term, I can execute my duties to the fullest and fulfill the mission history has given us.

The Constitution of the Republic of China was drafted in accordance with the bequeathed teachings of our founding father, Dr. Sun Yat-sen. Its goal is to clearly delineate the distribution of power, and incorporate the strengths of China and the West to establish a sound democratic system. However, the process of drafting the Constitution involved many twists and turns and compromises. At the time it was first put into effect, the nation was embroiled in war and chaos. In view of these special circumstances, the Temporary Provisions Effective During the Period of Mobilization for the Suppression of the Communist Rebellion were enacted. For the past forty-some years, under the leadership of

the late presidents Chiang Kai-shek and Chiang Ching-kuo, this painstakingly executed design has made an undeniable contribution to maintaining stability on our bastion of national revival, and creating the miracle of the "Taiwan experience." Nevertheless, with the changing domestic and international situation and the increasingly ardent desire of the people for democratic rule of law, the political environment of our bastion of national revival is not the same as in the past. Everybody now recognizes that normal development of a system of constitutional democracy is the only path to thoroughly implementing political democracy. Thus it is my hope that a termination of the Period of Mobilization for the Suppression of the Communist Rebellion can be declared, in accordance with the law, in the shortest possible period of time. Furthermore, based on the many years of experience we have accumulated in implementing our Constitution and on the needs arising from the current national environment, forward-looking and necessary revisions will be made to portions of the Constitution concerning such matters as the parliamentary organs of the central government, the system of local government, and government organization, to provide the Chinese people with a legal code that is in accord with the trends of our times, and to establish a great model of political democracy for all times. This difficult task can not be achieved in a single leap. The government will, in full sincerity and a spirit of selflessness, solicit the suggestions of people of all walks of life and cautiously and actively work at this task, so that, with the participation and encouragement of the people, it can be completed within a period of two years.

Equally important as innovation in our system of constitutional government is the institutionalization of party politics. Fair competition among political parties and entrusting decisions to the will of the people are the best ways to ensure thorough implementation of constitutional democracy. I have stressed on many occasions that we must invest our full efforts in building up our system and in cultivating a sound concept of the rule of law, so that all political activities can be carried out within the framework of the system, and operate according to the standards of the law.

However, I also wish to emphasize that any responsible political proposition must have identification with the Republic of China as its premise, and the welfare of all the people as its basis. The government will accelerate renovation of the judicial system to solidify our foundation for the rule of law, make the civil service system sounder to raise administrative efficiency, and ensure clean elections so that outstanding members of society can achieve their goal of serving the people through a process of fair elections. If we proceed gradually, one step at a time, our system of party

politics will naturally become sounder over time, our foundation of democracy will naturally become firmer, and the time when the country is well governed and enjoys lasting stability will naturally be in sight.

We know that there is a mutually complementary and mutually reinforcing relationship between a prosperous economy and the development of political democracy. Because the Taiwan-Penghu Kinmen-Matsu area has over the past forty years implemented a free economic system oriented toward enhancing the people's livelihood, it has a brilliant record of both rapid growth and equitable distribution of wealth. This fruit of the efforts of all the people has long been known throughout the world, and it has served to create a successful theory and model for all the developing countries of the world.

Looking to the future, the government will, in addition to adhering to its set policies of liberalization and internationalization so as to maintain the continued growth of the economy and trade, design a comprehensive plan for the use and development of our land, accelerate state-of-the-art scientific and technological research and transfer, advance the upgrading of industry, improve the production structure of agriculture and fishery, open up markets for foreign trade, and strengthen international cooperation, so that through a concerted effort, our economic development can in the six years to come expand its scope and horizons in its march toward a new level of achievement.

We believe that ensuring the people's well-being is the most important task of all development, and the fruits of all development should be enjoyed by all the people. In the process of economic development, the government should actively invest more in social welfare, and should, based on the particular circumstances of our country, learn from the experiences of more advanced countries and design a concrete program for the welfare of all the people, so that our citizens can live and work in safety and harmony, and the aged, weak, and handicapped can receive the care they need. At the same time, the government should also thoroughly implement ecological protection and prevention of public hazards, while improving traffic, public safety, and living environment conditions. In this way the people will not only have access to plentiful resources for their everyday life, but will also enjoy a rich and meaningful spiritual life, thus thoroughly realizing the ideals of prosperity and equitable distribution of wealth as prescribed in our Principle of the People's Well-Being.

We understand that culture and education are our nation's roots, and are the foundation of further national development. Any material or institutional development is destined to remain at a superficial level unless it is able to enrich our culture and raise our academic level. Through regional integration and cultural exchange, the overall development of the international community is gradually moving toward becoming an indivisible whole. This age of unprecedented vigorous development in our bastion of national revival is also the ideal time for making an objective review of our culture, and to choose and retain the best portions of it, and incorporate the strengths of other cultures where appropriate. We must begin with elementary school education, cultivating sound growth according to a plan, so as to set the minds and spir-

its of our people on the right track, mold their temperaments, and develop in them the life attitudes of placing a high value on ethics, being public-spirited and trustworthy, maintaining honor and discipline, and respecting the law. This will in turn promote the development of the Chinese cultural characteristic of being able to accommodate many diverse influences, thus making a valuable contribution to the well-being of mankind and world peace.

Fellow Countrymen, Distinguished Guests: Although development in the Republic of China over the past forty years has been restricted to the Taiwan-Penghu-Kinmen-Matsu area, all plans have been conceived with the future of all of China in mind. Taiwan and the mainland are indivisible parts of China's territory, and all Chinese are compatriots of the same flesh and blood. At this time when all of humanity longs for peace and is pursuing conciliation, all Chinese should work together to seek peaceful and democratic means to achieve our common goal of national reunification. In this time when the Communist countries of the world, including the Soviet Union, are declaring their renouncement of one-party dictatorship and the communist economic system, the Chinese Communists truly have no reason, and no strength, to continue to resist this trend over the long term. We sincerely hope that the Chinese Communists will become cognizant of the trends of the times, face up to the future, quicken their pace, and boldly march toward the goals of political democratization, economic liberalization, and social pluralization.

I would like at this point to earnestly declare that, if the Chinese Communist authorities can recognize the overall world trend and the common hope of all Chinese, implement political democracy and a free economic system, renounce the use of military force in the Taiwan Straits and not interfere with our development of foreign relations on the basis of a one-China policy, we would be willing, on a basis of equality, to establish channels of communication, and completely open up academic, cultural, economic, trade, scientific, and technological exchange, to lay a foundation of mutual respect, peace, and prosperity. We hope then, when objective conditions are ripe, we will be able to discuss the matter of our national reunification, based on the common will of the Chinese people on both sides of the Taiwan Straits.

Reunification, prosperity, and strength for China are the common hopes of all Chinese people. But in addition to the unshirkable responsibility borne by the people on both sides of the Taiwan Straits, overseas Chinese the world over, always loyal and patriotic, also play an important role. The government must expend its greatest efforts to assist overseas Chinese in their economic enterprises and in cultural and educational work. We have particular concern for our compatriots in Hongkong and Macao, and hope that the Chinese communist authorities will fully respect their rights to political and economic freedom. The government of the Republic of China will not pull out its organizations now based in that area, so as to help maintain the prosperity and stability of the Hongkong-Macao area and the well-being of all Chinese people.

At the same time, I wish to reiterate that the Republic of China is an independent and sovereign nation. We express our utmost admiration to the friendly countries who have maintained formal

diplomatic relations with us over the years, and we value these relations highly. We also hope to be able to strengthen and upgrade mutual cooperation with countries who would like to treat us with friendship on a foundation of substantive relations. As a member of the international community, the Republic of China has, on a basis of equality and reciprocity, long adhered to international standards, participated in international organizations, and worked to carry out its international responsibilities. We will work even more actively and pragmatically to expand our freedom of action in international activities, promote international cooperation, and contribute our efforts toward greater prosperity and peace for the world community.

It is our hope that we can continue to expand bilateral exchanges with the United States on the current basis, so as to enhance our traditional friendship and mutual interests. We hope that Japan will make even more constructive contributions to the future of both Japan and the Republic of China with a view to the long term. And we hope that through close cooperation with neighboring countries in the Asian-Pacific region we can together advance economic development in the region, to usher in the early

arrival of the Age of the Pacific.

Fellow Countrymen, Distinguished Guests: Over two thousand years ago, Chinese culture gave birth to the ideal of a great world commonwealth of peace and prosperity. The political, economic, and social systems and goals that it entails are in full accord with those implemented and sought by modern, free and democratic nations. A goal of these many years of untiring effort of the government of the Republic of China is also to achieve a renaissance and enhanced development of Chinese culture. We sincerely hope that during this generation, we can establish a political model of democratic rule of law, to lay the foundation for a prosperous and equitable economic system and to create a peaceful, happy, trusting, and harmonious society. We want Chinese the world over to be able to raise their heads and be proud, and live with meaning and dignity. We wish to solemnly declare to all Chinese as well as to the whole world that beginning now we are prepared with incomparable confidence to open a great and brilliant new era for the entire Chinese people.

Thank you.

## 2. Constitution of the Republic of China and the Temporary Provisions

*(Adopted by the National Assembly on December 25, 1946, promulgated by the National Government on January 1, 1947, and effective from December 25, 1947)*

The National Assembly of the Republic of China, by virtue of the mandate received from the whole body of citizens, in accordance with the teachings bequeathed by Dr. Sun Yat-sen in founding the Republic of China, and in order to consolidate the authority of the State, safeguard the rights of the people, ensure social tranquility, and promote the welfare of the people, do hereby establish this Constitution, to be promulgated throughout the country for faithful and perpetual observance by all.

### Chapter I. General Provisions

*Article 1.* The Republic of China, founded on the Three Principles of the People, shall be a democratic republic of the people, to be governed by the people and for the people.

*Article 2.* The sovereignty of the Republic of China shall reside in the whole body of citizens.

*Article 3.* Persons possessing the nationality of the Republic of China shall be citizens of the Republic of China.

*Article 4.* The territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly.

*Article 5.* There shall be equality among the various racial groups in the Republic of China.

*Article 6.* The national flag of the Republic of China shall be of red ground with a blue sky and a white sun in the upper left corner.

### Chapter II. Rights and Duties of the People

*Article 7.* All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.

*Article 8.* Personal freedom shall be guaranteed to the people. Except in case of *flagrante delicto* as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law. No person shall be tried or punished otherwise than by a law court in accordance with the procedure prescribed by law. Any arrest, detention, trial, or punishment which is not in accordance with the procedure prescribed by law may be resisted.

When a person is arrested or detained on suspicion of having committed a crime, the organ making the arrest or detention shall in writing inform the said person, and his designated relative or friend, of the grounds for his arrest or detention, and shall, within 24 hours, turn him over to a competent court for trial. The said person, or any other person, may petition the competent court that a writ be served within 24 hours on the organ making the arrest for the surrender of the said person for trial.

The court shall not reject the petition mentioned in the preceding paragraph, nor shall it order the organ concerned to make

an investigation and report first. The organ concerned shall not refuse to execute, or delay in executing, the writ of the court for the surrender of the said person for trial.

When a person is unlawfully arrested or detained by any organ, he or any other person may petition the court for an investigation. The court shall not reject such a petition, and shall, within 24 hours, investigate the action of the organ concerned and deal with the matter in accordance with law.

*Article 9.* Except those in active military service, no person shall be subject to trial by a military tribunal.

*Article 10.* The people shall have freedom of residence and of change of residence.

*Article 11.* The people shall have freedom of speech, teaching, writing and publication.

*Article 12.* The people shall have freedom of privacy of correspondence.

*Article 13.* The people shall have freedom of religious belief.

*Article 14.* The people shall have freedom of assembly and association.

*Article 15.* The right of existence, the right of work and the right of property shall be guaranteed to the people.

*Article 16.* The people shall have the right of presenting petitions, lodging complaints, or instituting legal proceedings.

*Article 17.* The people shall have the right of election, recall, initiative and referendum.

*Article 18.* The people shall have the right of taking public examinations and of holding public offices.

*Article 19.* The people shall have the duty of paying taxes in accordance with law.

*Article 20.* The people shall have the duty of performing military service in accordance with law.

*Article 21.* The people shall have the right and the duty of receiving citizens' education.

*Article 22.* All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.

*Article 23.* All the freedoms and rights enumerated in the preceding Article shall not be restricted by law except by such as may be necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare.

*Article 24.* Any public functionary who, in violation of law, infringes upon the freedom or right of any person shall, in addition to being subject to disciplinary measures in accordance with law, be held responsible under criminal and civil laws. The injured person may, in accordance with law, claim compensation from the State for damage sustained.

### Chapter III. The National Assembly

*Article 25.* The National Assembly shall, in accordance with the provisions of this Constitution, exercise political powers on behalf of the whole body of citizens.

*Article 26.* The National Assembly shall be composed of the

following delegates:

1. One delegate shall be elected from each Hsien, Municipality, or area of equivalent status. In case its population exceeds 500,000, one additional delegate shall be elected for each additional 500,000. Areas equivalent to Hsien or Municipalities shall be prescribed by law;
2. Delegates to represent Mongolia shall be elected on the basis of four for each League and one for each Special Banner;
3. The number of delegates to be elected from Tibet shall be prescribed by law;
4. The number of delegates to be elected by various racial groups in frontier regions shall be prescribed by law;
5. The number of delegates to be elected by Chinese citizens residing abroad shall be prescribed by law;
6. The number of delegates to be elected by occupational groups shall be prescribed by law;
7. The number of delegates to be elected by women's organizations shall be prescribed by law.

*Article 27.* The function of the National Assembly shall be as follows:

1. To elect the President and the Vice President;
2. To recall the President and the Vice President;
3. To amend the Constitution; and
4. To vote on proposed Constitutional amendments submitted by the Legislative Yuan by way of referendum.

With respect to the rights of initiative and referendum, except as is provided in Items 3 and 4 of the preceding paragraph, the National Assembly shall make regulations pertaining thereto and put them into effect, after the above-mentioned two political rights shall have been exercised in one half of the Hsien and Municipalities of the whole country.

*Article 28.* Delegates to the National Assembly shall be elected every six years.

The term of office of the delegates to each National Assembly shall terminate on the day on which the next National Assembly convenes.

No incumbent government official shall, in the electoral area where he holds office, be elected delegate to the National Assembly.

*Article 29.* The National Assembly shall be convoked by the President to meet 90 days prior to the date of expiration of each presidential term.

*Article 30.* An extraordinary session of the National Assembly shall be convoked in any of the following circumstances:

1. When, in accordance with the provisions of Article 49 of this Constitution, a new President and a new Vice President are to be elected;
2. When, by resolution of the Control Yuan, an impeachment of the President or the Vice President is instituted;
3. When, by resolution of the Legislative Yuan, an amendment to the Constitution is proposed; and
4. When a meeting is requested by not less than two-fifths of the delegates to the National Assembly.

When an extraordinary session is to be convoked in accordance with Item 1 or Item 2 of the preceding paragraph, the President of the Legislative Yuan shall issue the notice of convocation; when

it is to be convoked in accordance with Item 3 or Item 4, it shall be convoked by the President of the Republic.

*Article 31.* The National Assembly shall meet at the seat of the Central Government.

*Article 32.* No delegate to the National Assembly shall be held responsible outside the Assembly for opinions expressed or votes cast at meetings of the Assembly.

*Article 33.* While the Assembly is in session, no delegate to the National Assembly shall, except in case of *flagrante delicto*, be arrested or detained without the permission of the National Assembly.

*Article 34.* The organization of the National Assembly, the election and recall of delegates to the National Assembly, and the procedure whereby the National Assembly is to carry out its functions, shall be prescribed by law.

#### Chapter IV. The President

*Article 35.* The President shall be the head of the State and shall represent the Republic of China in foreign relations.

*Article 36.* The President shall have supreme command of the land, sea and air forces of the whole country.

*Article 37.* The President shall, in accordance with law, promulgate laws and issue mandates with the counter-signature of the President of the Executive Yuan or with the counter-signatures of both the President of the Executive Yuan and the Ministers or Chairmen of Commissions concerned.

*Article 38.* The President shall, in accordance with the provisions of this Constitution, exercise the powers of concluding treaties, declaring war and making peace.

*Article 39.* The President may, in accordance with law, declare martial law with the approval of, or subject to confirmation by, the Legislative Yuan. When the Legislative Yuan deems it necessary, it may by resolution request the President to terminate martial law.

*Article 40.* The President shall, in accordance with law, exercise the power of granting amnesties, pardons, remission of sentences and restitution of civil rights.

*Article 41.* The President shall, in accordance with law, appoint and remove civil and military officials.

*Article 42.* The President may, in accordance with law, confer honors and decorations.

*Article 43.* In case of a natural calamity, an epidemic, or a national financial or economic crisis that calls for emergency measures, the President, during the recess of the Legislative Yuan, may, by resolution of the Executive Yuan Council, and in accordance with the Law on Emergency Orders, issue emergency orders, proclaiming such measures as may be necessary to cope with the situation. Such orders shall, within one month after issuance, be presented to the Legislative Yuan for confirmation; in case the Legislative Yuan withholds confirmation, the said orders shall forthwith cease to be valid.

*Article 44.* In case of disputes between two or more Yuan other than those concerning which there are relevant provisions in this

Constitution, the President may call a meeting of the Presidents of the Yuan concerned for consultation with a view to reaching a solution.

*Article 45.* Any citizen of the Republic of China who has attained the age of 40 years may be elected President or Vice President.

*Article 46.* The election of the President and the Vice President shall be prescribed by law.

*Article 47.* The President and the Vice President shall serve a term of six years. They may be re-elected for a second term.

*Article 48.* The President shall, at the time of assuming office, take the following oath:

"I do solemnly and sincerely swear before the people of the whole country that I will observe the Constitution, faithfully perform my duties, promote the welfare of the people, safeguard the security of the State, and will in no way betray the people's trust. Should I break my oath, I shall be willing to submit myself to severe punishment by the State. This is my solemn oath."

*Article 49.* In case the office of the President should become vacant, the Vice President shall succeed until the expiration of the original presidential term. In case the office of both the President and the Vice President should become vacant, the President of the Executive Yuan shall act for the President; and, in accordance with the provisions of Article 30 of this Constitution, an extraordinary session of the National Assembly shall be convoked for the election of a new President and a new Vice President, who shall hold office until the completion of the term left unfinished by the preceding President. In case the President should be unable to attend to office due to any cause, the Vice President shall act for the President. In case both the President and Vice President should be unable to attend to office, the President of the Executive Yuan shall act for the President.

*Article 50.* The President shall be relieved of his functions on the day on which his term of office expires. If by that time the succeeding President has not yet been elected, or if the President-elect and the Vice-President-elect have not yet assumed office, the President of the Executive Yuan shall act for the President.

*Article 51.* The period during which the President of the Executive Yuan may act for the President shall not exceed three months.

*Article 52.* The President shall not, without having been recalled, or having been relieved of his functions, be liable to criminal prosecution unless he is charged with having committed an act of rebellion or treason.

## Chapter V. Administration

*Article 53.* The Executive Yuan shall be the highest administrative organ of the State.

*Article 54.* The Executive Yuan shall have a President, a Vice President, a certain number of Ministers and Chairmen of Commissions, and a certain number of Ministers without Portfolio.

*Article 55.* The President of the Executive Yuan shall be nominated and, with the consent of the Legislative Yuan, appointed

by the President of the Republic.

If, during the recess of the Legislative Yuan, the President of the Executive Yuan should resign or if his office should become vacant, his functions shall be exercised by the Vice President of the Yuan, acting on his behalf, but the President of the Republic shall, within 40 days, request a meeting of the Legislative Yuan to confirm his nominee for the vacancy. Pending such confirmation, the Vice President of the Executive Yuan shall temporarily exercise the functions of the President of the said Yuan.

*Article 56.* The Vice President of the Executive Yuan, Ministers and Chairmen of Commissions, and Ministers without Portfolio shall be appointed by the President of the Republic upon the recommendation of the President of the Executive Yuan.

*Article 57.* The Executive Yuan shall be responsible to the Legislative Yuan in accordance with the following provisions:

1. The Executive Yuan has the duty to present to the Legislative Yuan a statement of its administrative policies and a report on its administration. While the Legislative Yuan is in session, Members of the Legislative Yuan shall have the right to question the President and the Ministers and Chairmen of Commissions of the Executive Yuan.

2. If the Legislative Yuan does not concur in any important policy of the Executive Yuan, it may, by resolution, request the Executive Yuan to alter such a policy. With respect to such resolution, the Executive Yuan may, with the approval of the President of the Republic, request the Legislative Yuan for reconsideration. If, after reconsideration, two-thirds of the Members of the Legislative Yuan present at the meeting uphold the original resolution, the President of the Executive Yuan shall either abide by the same or resign from office.

3. If the Executive Yuan deems a resolution on a statutory, budgetary, or treaty bill passed by the Legislative Yuan difficult of execution, it may, with the approval of the President of the Republic and within ten days after its transmission to the Executive Yuan, request the Legislative Yuan to reconsider the said resolution. If after reconsideration, two-thirds of the Members of the Legislative Yuan present at the meeting uphold the original resolution, the President of the Executive Yuan shall either abide by the same or resign from office.

*Article 58.* The Executive Yuan shall have an Executive Yuan Council, to be composed of its President, Vice President, various Ministers and Chairmen of Commissions, and Ministers without Portfolio, with its President as Chairman.

Statutory or budgetary bills or bills concerning martial law, amnesty, declaration of war, conclusion of peace or treaties, and other important affairs, all of which are to be submitted to the Legislative Yuan, as well as matters that are of common concern to the various Ministries and Commissions, shall be presented by the President and various Ministers and Chairmen of Commissions of the Executive Yuan to the Executive Yuan Council for decision.

*Article 59.* The Executive Yuan shall, three months before the beginning of each fiscal year, present to the Legislative Yuan the budgetary bill for the following fiscal year.

*Article 60.* The Executive Yuan shall, within four months after the end of each fiscal year, present final accounts of revenues



and expenditures to the Control Yuan.

*Article 61.* The organization of the Executive Yuan shall be prescribed by law.

## Chapter VI. Legislation

*Article 62.* The Legislative Yuan shall be the highest legislative organ of the State, to be constituted of members elected by the people. It shall exercise legislative power on behalf of the people.

*Article 63.* The Legislative Yuan shall have the power to decide by resolution upon statutory or budgetary bills or bills concerning martial law, amnesty, declaration of war, conclusion of peace or treaties, and other important affairs of the State.

*Article 64.* Members of the Legislative Yuan shall be elected in accordance with the following provisions:

1. Those to be elected from the Provinces and by the Municipalities under the direct jurisdiction of the Executive Yuan shall be five for each Province or Municipality with a population of not more than 3,000,000, one additional member shall be elected for each additional 1,000,000 in a Province or Municipality whose population is over 3,000,000;

2. Those to be elected from Mongolian Leagues and Banners;

3. Those to be elected from Tibet;

4. Those to be elected by various racial groups in frontier regions;

5. Those to be elected by Chinese citizens residing abroad; and

6. Those to be elected by occupational groups.

The election of members of the Legislative Yuan and the number of those to be elected in accordance with Items 2 to 6 of the preceding paragraph shall be prescribed by law. The number of women to be elected under the various items enumerated in the first paragraph shall be prescribed by law.

*Article 65.* Members of the Legislative Yuan shall serve a term of three years, and shall be re-eligible. The election of Members of the Legislative Yuan shall be completed within three months prior to the expiration of each term.

*Article 66.* The Legislative Yuan shall have a President and a Vice President, who shall be elected by and from among its Members.

*Article 67.* The Legislative Yuan may set up various committees. Such committees may invite government officials and private persons concerned to be present at their meetings to answer questions.

*Article 68.* The Legislative Yuan shall hold two sessions each year, and shall convene of its own accord. The first session shall last from February to the end of May, and the second session from September to the end of December. Whenever necessary a session may be prolonged.

*Article 69.* In any of the following circumstances, the Legislative Yuan may hold an extraordinary session:

1. At the request of the President of the Republic;

2. Upon the request of not less than one-fourth of its members.

*Article 70.* The Legislative Yuan shall not make proposals for an increase in the expenditures in the budgetary bill presented by

the Executive Yuan.

*Article 71.* At the meetings of the Legislative Yuan, the Presidents of the various Yuan concerned and the various Ministers and Chairmen of Commissions concerned may be present to give their views.

*Article 72.* Statutory bills passed by the Legislative Yuan shall be transmitted to the President of the Republic and to the Executive Yuan. The President shall, within ten days after receipt thereof, promulgate them; or he may deal with them in accordance with the provisions of Article 57 of this Constitution.

*Article 73.* No Member of the Legislative Yuan shall be held responsible outside the Yuan for opinions expressed or votes cast in the Yuan.

*Article 74.* No Member of the Legislative Yuan shall, except in case of *flagrante delicto*, be arrested or detained without the permission of the Legislative Yuan.

*Article 75.* No Member of the Legislative Yuan shall concurrently hold a government post.

*Article 76.* The organization of the Legislative Yuan shall be prescribed by law.

## Chapter VII. Judiciary

*Article 77.* The Judicial Yuan shall be the highest judicial organ of the State and shall have charge of civil, criminal, and administrative cases, and over cases concerning disciplinary measures against public functionaries.

*Article 78.* The Judicial Yuan shall interpret the Constitution and shall have the power to unify the interpretation of laws and orders.

*Article 79.* The Judicial Yuan shall have a President and a Vice President, who shall be nominated and, with the consent of the Control Yuan, appointed by the President of the Republic.

The Judicial Yuan shall have a certain number of Grand Justices to take charge of matters specified in article 78 of this Constitution, who shall be nominated and, with the consent of the Control Yuan, appointed by the President of the Republic.

*Article 80.* Judges shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference.

*Article 81.* Judges shall hold office for life. No judge shall be removed from office unless he has been found guilty of a criminal offense or subjected to disciplinary measure, or declared to be under interdiction. No judge shall, except in accordance with law, be suspended or transferred or have his salary reduced.

*Article 82.* The organization of the Judicial Yuan and of the law courts of various grades shall be prescribed by law.

## Chapter VIII. Examination

*Article 83.* The Examination Yuan shall be the highest examination organ of the State and shall have charge of matters relating to examination, employment, registration, service rating, scale of salaries, promotion and transfer, security of tenure, commen-

dition, pecuniary aid in case of death, retirement and old age pension.

*Article 84.* The Examination Yuan shall have a President and a Vice President and a certain number of Members, all of whom shall be nominated and, with the consent of the Control Yuan, appointed by the President of the Republic.

*Article 85.* In the selection of public functionaries, a system of open competitive examination shall be put into operation, and examinations shall be held in different areas, with prescribed numbers of persons to be selected according to various Provinces and areas. No person shall be appointed to a public office unless he is qualified through examination.

*Article 86.* The following qualifications shall be determined and registered through examination by the Examination Yuan in accordance with law:

1. Qualification for appointment as public functionaries; and
2. Qualification for practice in specialized professions or as technicians.

*Article 87.* The Examination Yuan may, with respect to matters under its charge, present statutory bills to the Legislative Yuan.

*Article 88.* Members of the Examination Yuan shall be above partisanship and shall independently exercise their functions in accordance with law.

*Article 89.* The organization of the Examination Yuan shall be prescribed by law.

## Chapter IX. Control

*Article 90.* The Control Yuan shall be the highest control organ of the State and shall exercise the powers of consent, impeachment, censure and auditing.

*Article 91.* The Control Yuan shall be composed of Members who shall be elected by Provincial and Municipal Councils, the local Councils of Mongolia and Tibet, and Chinese citizens residing abroad. Their numbers shall be determined in accordance with the following provisions:

1. Five Members from each Province;
2. Two Members from each Municipality under the direct jurisdiction of the Executive Yuan;
3. Eight Members from Mongolian Leagues and Banners;
4. Eight Members from Tibet; and
5. Eight Members from Chinese citizens residing abroad.

*Article 92.* The Control Yuan shall have a President and a Vice President, who shall be elected by and from among its Members.

*Article 93.* Members of the Control Yuan shall serve a term of six years and shall be re-eligible.

*Article 94.* When the Control Yuan exercises the power of consent in accordance with this Constitution, it shall do so by resolution of a majority of the Members present at the meeting.

*Article 95.* The Control Yuan may, in the exercise of its powers of control, request the Executive Yuan and its Ministries and Commissions to submit to it for perusal the original orders issued by them and all other relevant documents.

*Article 96.* The Control Yuan may, taking into account the

work of the Executive Yuan and its various Ministries and Commissions, set up a certain number of committees to investigate their activities with a view to ascertaining whether or not they are guilty of violation of law or neglect of duty.

*Article 97.* The Control Yuan may, on the basis of the investigations and resolutions of its committees, propose corrective measures and forward them to the Executive Yuan and the Ministries and Commissions concerned, directing their attention to effecting improvements.

When the Control Yuan deems a public functionary in the Central Government or in a local government guilty of neglect of duty or violation of law, it may propose corrective measures or institute an impeachment. If it involves a criminal offense, the case shall be turned over to a law court.

*Article 98.* Impeachment by the Control Yuan of a public functionary in the Central Government or in a local government shall be instituted upon the proposal of one or more than one Member of the Control Yuan and the decision, after due consideration, by a committee composed of not less than nine Members.

*Article 99.* In case of impeachment by the Control Yuan of the personnel of the Judicial Yuan or of the Examination Yuan for neglect of duty or violation of law, the provisions of Articles 95, 97 and 98 of this Constitution shall be applicable.

*Article 100.* Impeachment by the Control Yuan of the President or the Vice President of the Republic shall be instituted upon the proposal of not less than one-fourth of the whole body of Members of the Control Yuan, and the resolution, after due consideration, by the majority of the whole body of members of the Control Yuan, and the same shall be presented to the National Assembly.

*Article 101.* No Member of the Control Yuan shall be held responsible outside the Yuan for opinions expressed or votes cast in the Yuan.

*Article 102.* No Member of the Control Yuan shall, except in case of *flagrante delicto*, be arrested or detained without the permission of the Control Yuan.

*Article 103.* No member of the Control Yuan shall concurrently hold a public office or engage in any profession.

*Article 104.* In the Control Yuan, there shall be an Auditor General who shall be nominated and, with the consent of the Legislative Yuan, appointed by the President of the Republic.

*Article 105.* The Auditor General shall within three months after presentation by the Executive Yuan of the final accounts of revenues and expenditures, complete the auditing thereof in accordance with law, and submit an auditing report to the Legislative Yuan.

*Article 106.* The organization of the Control Yuan shall be prescribed by law.

## Chapter X. Powers of the Central and Local Governments

*Article 107.* In the following matters, the Central Government shall have the power of legislation and administration:

1. Foreign affairs;
2. National defense and military affairs concerning national defense;
3. Nationality law and criminal, civil and commercial law;
4. Judicial system;
5. Aviation, national highways, state-owned railways, navigation, postal and telegraph service;
6. Central Government finance and national revenues;
7. Demarcation of national, provincial and hsien revenues;
8. State-operated economic enterprises;
9. Currency system and state banks;
10. Weights and measures;
11. Foreign trade policies;
12. Financial and economic matters affecting foreigners or foreign countries; and
13. Other matters relating to the Central Government as provided by this Constitution.

*Article 108.* In the following matters, the Central Government shall have the power of legislation and administration, but the Central Government may delegate the power of Administration to the Provincial and Hsien governments:

1. General principles of Provincial and Hsien self-government;
2. Division of administrative areas;
3. Forestry, industry, mining and commerce;
4. Educational system;
5. Banking and exchange system;
6. Shipping and deep-sea fishery;
7. Public utilities;
8. Cooperative enterprises;
9. Water and land communication and transportation covering two or more provinces;
10. Water conservancy, waterways, agriculture and pastoral enterprises covering two or more provinces;
11. Registration, employment, supervision, and security of tenure of officials in the Central and local governments;
12. Land legislation;
13. Labor legislation and other social legislation;
14. Eminent domain;
15. Census-taking and compilation of population statistics for the whole country;
16. Immigration and land reclamation;
17. Police system;
18. Public health;
19. Relief, pecuniary aid in case of death and aid in case of unemployment; and
20. Preservation of ancient books and articles and sites of cultural value.

With respect to the various items enumerated in the preceding paragraph, the Provinces may enact separate rules and regulations, provided these are not in conflict with national laws.

*Article 109.* In the following matters, the Provinces shall have the power of legislation and administration, but the provinces may delegate the power of administration to the hsien;

1. Provincial education, public health, industries and communications;

2. Management and disposal of Provincial property;
3. Administration of Municipalities under Provincial jurisdiction;
4. Province-operated enterprises;
5. Provincial cooperative enterprises;
6. Provincial agriculture, forestry, water conservancy, fishery, animal husbandry and public works;
7. Provincial finance and revenues;
8. Provincial debts;
9. Provincial banks;
10. Provincial police administration;
11. Provincial charitable and public welfare works; and
12. Other matters delegated to the Provinces in accordance with national laws.

Except as otherwise provided by law, any of the matters enumerated in the various items of the preceding paragraph, in so far as it covers two or more Provinces, may be undertaken jointly by the Provinces concerned.

When any Province, in undertaking matters listed in any of the items of the first paragraph, finds its funds insufficient, it may, by resolution of the Legislative Yuan, obtain subsidies from the National Treasury.

*Article 110.* In the following matters, the Hsien shall have the power of legislation and administration:

1. Hsien education, public health, industries and communications;
2. Management and disposal of Hsien property;
3. Hsien-operated enterprises;
4. Hsien cooperative enterprises;
5. Hsien agriculture and forestry, water conservancy, fishery, animal husbandry and public works;
6. Hsien finance and revenues;
7. Hsien debts;
8. Hsien banks;
9. Administration of Hsien police and defense;
10. Hsien charitable and public welfare works; and
11. Other matters delegated to the Hsien in accordance with national laws and provincial Self-Government Regulations.

Except as otherwise provided by law, any of the matters enumerated in the various items of the preceding paragraph, in so far as it covers two or more Hsien, may be undertaken jointly by the Hsien concerned.

*Article 111.* Any matter not enumerated in Articles 107, 108, 109 and 110 shall fall within the jurisdiction of the Central Government, if it is national in nature; of the Province, if it is Provincial in nature; and of the Hsien, if it concerns the Hsien. In case of dispute, it shall be settled by the Legislative Yuan.

## Chapter XI. System of Local Government

### Section 1. The Province

*Article 112.* A Province may convoke a Provincial Assembly to enact, in accordance with the General Principles of Provincial

and Hsien Self-Government, regulations, provided the said regulations are not in conflict with the Constitution.

The organization of the Provincial Assembly and the election of the delegates shall be prescribed by law.

*Article 113.* The Provincial Self-Government Regulations shall include the following provisions:

1. In the Province, there shall be a Provincial Council. Members of the Provincial Council shall be elected by the people of the Province.

2. In the Province, there shall be a Provincial Government with a Provincial Governor who shall be elected by the people of the Province.

3. Relationship between the Province and the Hsien.

The legislative power of the Province shall be exercised by the Provincial Council.

*Article 114.* The Provincial Self-Government Regulations shall, after enactment, be forthwith submitted to the Judicial Yuan. The Judicial Yuan, if it deems any part thereof unconstitutional, shall declare null and void the articles repugnant to the Constitution.

*Article 115.* If, during the enforcement of the Provincial Self-Government Regulations, there should arise any serious obstacle in the application of any of the articles contained therein, the Judicial Yuan shall first summon the various parties concerned to present their views; and thereupon the Presidents of the Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan and Control Yuan shall form a Committee, with the President of the Judicial Yuan as Chairman, to propose a formula for solution.

*Article 116.* Provincial rules and regulations that are in conflict with national laws shall be null and void.

*Article 117.* When doubt arises as to whether or not there is a conflict between Provincial rules or regulations and national laws, interpretation thereon shall be made by the Judicial Yuan.

*Article 118.* The self-government of municipalities under the direct jurisdiction of the Executive Yuan shall be prescribed by law.

*Article 119.* The local self-government system of the Mongolian Leagues and Banners shall be prescribed by law.

*Article 120.* The self-government system of Tibet shall be safeguarded.

## Section 2. The Hsien

*Article 121.* The Hsien shall enforce Hsien self-government.

*Article 122.* A Hsien may convocate a Hsien Assembly to enact, in accordance with the General Principles of Provincial and Hsien Self-Government, Hsien Self-Government Regulations, provided the said regulations are not in conflict with the Constitution or with Provincial Self-Government regulations.

*Article 123.* The people of the Hsien shall, in accordance with law, exercise the rights of initiative and referendum in matters within the sphere of Hsien Self-Government, and shall, in accordance with law, exercise the rights of election and recall of the Magistrate and other Hsien self-government officials.

*Article 124.* In the Hsien, there shall be a Hsien Council. Members of the Hsien Council shall be elected by the people of the Hsien. The legislative power of the Hsien shall be exercised by the

Hsien Council.

*Article 125.* Hsien rules and regulation that are in conflict with national laws, or with Provincial rules and regulations, shall be null and void.

*Article 126.* In the Hsien, there shall be a Hsien Government with a Hsien Magistrate who shall be elected by the people of the Hsien.

*Article 127.* The Hsien Magistrate shall have charge of Hsien self-government and shall administer matters delegated to the Hsien by the Central or Provincial Government.

*Article 128.* The provisions governing the Hsien shall apply *mutatis mutandis* to the Municipality.

## Chapter XII. Election, Recall, Initiative and Referendum

*Article 129.* The various kinds of elections prescribed in this Constitution, except as otherwise provided by this Constitution, shall be by universal, equal, and direct suffrage and by secret ballot.

*Article 130.* Any citizen of the Republic of China who has attained the age of 20 years shall have the right of election in accordance with law. Except as otherwise provided by this Constitution or by law, any citizen who has attained the age of 23 years shall have the right of being elected in accordance with law.

*Article 131.* All candidates in the various kinds of elections prescribed in this Constitution shall openly campaign for their election.

*Article 132.* Intimidation or inducement shall be strictly forbidden in elections. Suits arising in connection with elections shall be tried by the courts.

*Article 133.* A person elected may, in accordance with law, be recalled by his constituency.

*Article 134.* In the various kinds of elections, the number of women to be elected shall be fixed, and measures pertaining thereto shall be prescribed by law.

*Article 135.* The number of delegates to the National Assembly and the manner of their election from people in interior areas, who have their own conditions of living and habits, shall be prescribed by law.

*Article 136.* The exercise of the rights of initiative and referendum shall be prescribed by law.

## Chapter XIII. Fundamental National Policies

### Section 1. National Defense

*Article 137.* The national defense of the Republic of China shall have as its objective the safeguarding of national security and the preservation of world peace. The organization of national defense shall be prescribed by law.

*Article 138.* The land, sea and air forces of the whole country shall be above personal, regional, or party affiliations, shall be loyal to the State and shall protect the people.

*Article 139.* No political party and no individual shall make use of armed forces as an instrument in a struggle for political powers.

*Article 140.* No military man in active service may concurrently hold a civil office.

### **Section 2. Foreign Policy**

*Article 141.* The foreign policy of the Republic of China shall, in a spirit of independence and initiative and on the basis of the principles of equality and reciprocity, cultivate good-neighborliness with other nations, and respect treaties and the Charter of the United Nations, in order to protect the rights and interests of Chinese citizens residing abroad, promote international cooperation, advance international justice and ensure world peace.

### **Section 3. National Economy**

*Article 142.* National economy shall be based on the Principle of the People's Livelihood and shall seek to effect equalization of land ownership and restriction of private capital in order to attain a well-balanced sufficiency in national wealth and people's livelihood.

*Article 143.* All land within the territory of the Republic of China shall belong to the whole body of citizens. Private ownership of land, acquired by the people in accordance with law, shall be protected and restricted by law. Privately-owned land shall be liable to taxation according to its value, and the Government may buy such land according to its value.

Mineral deposits which are embedded in the land, and natural power which may, for economic purposes, be utilized for the public benefit shall belong to the state, regardless of the fact that private individuals may have acquired ownership over such land.

If the value of a piece of land has increased, not through the exertion of labor or the employment of capital, the State shall levy thereon an increment tax, the proceeds of which shall be enjoyed by the people in common.

In the distribution and readjustment of land, the State shall in principle assist self-farming land-owners and persons who make use of the land by themselves, and shall also regulate their appropriate areas of operation.

*Article 144.* Public utilities and other enterprises of a monopolistic nature shall, in principle, be under public operation. In cases permitted by law, they may be operated by private citizens.

*Article 145.* With respect to private wealth and privately-operated enterprises, the State shall restrict them by law if they are deemed detrimental to a balanced development of national wealth and people's livelihood.

Cooperative enterprises shall receive encouragement and assistance from the State.

Private citizens' productive enterprises and foreign trade shall receive encouragement, guidance and protection from the State.

*Article 146.* The State shall, by the use of scientific techniques, develop water conservancy, increase the productivity of land, improve agricultural conditions, plan for the utilization of land, develop agricultural resources and hasten the industrialization of agriculture.

*Article 147.* The Central Government, in order to attain a bal-

anced economic development among the provinces, shall give appropriate aid to poor or unproductive Provinces.

The Provinces, in order to attain a balanced economic development among the Hsien, shall give appropriate aid to poor or unproductive Hsien.

*Article 148.* Within the territory of the Republic of China, all goods shall be permitted to move freely from place to place.

*Article 149.* Financial institutions shall, in accordance with law, be subject to State control.

*Article 150.* The State shall extensively establish financial institutions for the common people, with a view to relieving unemployment.

*Article 151.* With respect to Chinese citizens residing abroad, the State shall foster and protect the development of their economic enterprises.

### **Section 4. Social Security**

*Article 152.* The State shall provide suitable opportunity for work to people who are able to work.

*Article 153.* The State, in order to improve the livelihood of laborers and farmers and to improve their productive skill, shall enact laws and carry out policies for their protection.

Women and children engaged in labor shall, according to their age and physical condition, be accorded special protection.

*Article 154.* Capital and labor shall, in accordance with the principle of harmony and cooperation, promote productive enterprises. Conciliation and arbitration of disputes between capital and labor shall be prescribed by law.

*Article 155.* The State, in order to promote social welfare, shall establish a social insurance system. To the aged and the infirm who are unable to earn a living, and to victims of unusual calamities, the State shall give appropriate assistance and relief.

*Article 156.* The State, in order to consolidate the foundation of national existence and development, shall protect motherhood and carry out the policy of promoting the welfare of women and children.

*Article 157.* The State, in order to improve national health, shall establish extensive services for sanitation and health protection, and a system of public medical service.

### **Section 5. Education and Culture**

*Article 158.* Education and culture shall aim at the development among the citizens of the national spirit, the spirit of self-government, national morality, good physique, scientific knowledge and the ability to earn a living.

*Article 159.* All citizens shall have equal opportunity to receive an education.

*Article 160.* All children of school age from 6 to 12 years shall receive free primary education. Those from poor families shall be supplied with books by the Government.

All citizens above school age who have not received primary education shall receive supplementary education free of charge and shall also be supplied with books by the Government.

*Article 161.* The national, provincial, and local governments shall extensively establish scholarships to assist students of good scholastic standing and exemplary conduct who lack the means to continue their school education.

*Article 162.* All public and private educational and cultural institutions in the country shall, in accordance with law, be subject to State supervision.

*Article 163.* The State shall pay due attention to the balanced development of education in different regions, and shall promote social education in order to raise the cultural standard of the citizens in general. Grants from the National Treasury shall be made to frontier regions and economically poor areas to help them meet their educational and cultural expenses. The Central Government may either itself undertake the more important educational and cultural enterprises in such regions or give them financial assistance.

*Article 164.* Expenditures of educational programs, scientific studies and cultural services shall not be, in respect of the Central Government, less than 15 percent of the total national budget; in respect of each Province, less than 25 percent of the total Provincial budgets; and in respect of each Municipality or Hsien, less than 35 percent of the total Municipal or Hsien budget. Educational and cultural foundations established in accordance with law shall, together with their property, be protected.

*Article 165.* The State shall safeguard the livelihood of those who work in the fields of education, sciences and arts, and shall, in accordance with the development of national economy, increase their remuneration from time to time.

*Article 166.* The State shall encourage scientific discoveries and inventions, and shall protect ancient sites and articles of historical, cultural or artistic value.

*Article 167.* The State shall give encouragement or subsidies to the following enterprises or individuals:

1. Educational enterprises in the country which have been operated with good record by private individuals;
2. Educational enterprises which have been operated with good record by Chinese citizens residing abroad;
3. Persons who have made discoveries or inventions in the fields of learning and technology; and
4. Persons who have rendered long and meritorious services in the field of education.

#### **Section 6. Frontier Regions**

*Article 168.* The State shall accord to the various racial groups in the frontier regions legal protection of their status and shall give them special assistance in their local self-government undertakings.

*Article 169.* The State shall, in a positive manner, undertake and foster the development of education, culture, communications, water conservancy, public health and other economic and social enterprises of the various racial groups in the frontier regions. With respect to the utilization of land, the State shall, after taking into account the climatic conditions, the nature of the soil and the life and habits of the people, adopt measures to protect the land and to assist in its development.

## **Chapter XIV. Enforcement and Amendment of the Constitution**

*Article 170.* The term "law," as used in this Constitution, shall denote any legislative bill that shall have been passed by the Legislative Yuan and promulgated by the President of the Republic.

*Article 171.* Laws that are in conflict with the Constitution shall be null and void.

When doubt arises as to whether or not a law is in conflict with the Constitution, interpretation thereon shall be made by the Judicial Yuan.

*Article 172.* Ordinances that are in conflict with the Constitution or with laws shall be null and void.

*Article 173.* The Constitution shall be interpreted by the Judicial Yuan.

*Article 174.* Amendments to the Constitution shall be made in accordance with one of the following procedures:

1. Upon the proposal of one-fifth of the total number of the delegates to the National Assembly and by a resolution of three-fourths of the delegates present at a meeting having a quorum of two-thirds of the entire Assembly, the Constitution may be amended.

2. Upon the proposal of one-fourth of the members of the Legislative Yuan and by a resolution of three-fourths of the members present at a meeting having a quorum of three-fourths of the members of the Yuan, an amendment may be drawn up and submitted to the National Assembly by way of referendum. Such a proposed amendment to the Constitution shall be publicly published half a year before the National Assembly convenes.

*Article 175.* Whenever necessary, enforcement procedures in regard to any matters prescribed in this Constitution shall be separately provided by law.

The preparatory procedures for the enforcement of this Constitution shall be decided upon by the same National Assembly which shall have adopted this Constitution.

## **Temporary Provisions Effective During the Period of Communist Rebellion**

*(Adopted by the National Assembly on April 18, 1948, promulgated by the National Government on May 10, 1948, amended by the National Assembly on March 11, 1960, amended by the extraordinary session of the National Assembly on February 7, 1966, amended by the National Assembly on March 19, 1966, and amended by the fifth session of the National Assembly at its ninth plenary meeting March 17, 1972)*

In accordance with the procedure prescribed in Paragraph 1 of Article 174 of the Constitution, the following Temporary Provisions to be effective during the Period of Communist Rebellion are hereby enacted:

1. The President during the Period of Communist Rebellion may, by resolution of the Executive Yuan Council, take emergency measures to avert an imminent danger to the security of the State

or of the people or to cope with any serious financial or economic crisis, without being subject to the procedural restrictions prescribed in Article 39 or Article 43 of the Constitution.

2. The emergency measures mentioned in the preceding paragraph may be modified or abrogated by the Legislative Yuan in accordance with Paragraph 2 of Article 57 of the Constitution.

3. During the Period of Communist Rebellion, the President and the Vice President may be re-elected without being subject to the two-term restriction prescribed in Article 47 of the Constitution.

4. During the Period of Communist Rebellion, the President is authorized to establish, in accordance with the constitutional system, an organ for making major policy decisions concerned with national mobilization and suppression of the Communist rebellion and for assuming administrative control in war zones.

5. To meet the requirements of national mobilization and the suppression of the Communist rebellion, the President may make adjustments in the administrative and personnel organs of the Central Government, as well as their organizations.

6. During the Period of Communist Rebellion, the President may, in accordance with the following stipulations, initiate and promulgate for enforcement regulations providing for elections to strengthen elective offices at the Central Government level without being subject to the restrictions prescribed in Article 26, Article 64 or Article 91 of the Constitution:

(1) In free areas, additional members of representatives may be elected to all elective offices at the Central Government level by elections to be held at established time. The President may initiate regulations for the selection of members of the Legislative Yuan and the Control Yuan who were to have been elected from among Chinese nationals residing overseas but whose election could

not be carried out because of the actual situation.

(2) Representatives to the first elective offices at the Central Government level were elected by popular vote throughout the nation. These representatives, as well as those representatives who were elected later to fill vacancies or to provide additional representation, therefore shall continue to carry out their functions in accordance with law. As soon as the Chinese mainland is recovered, elections shall be held one by one as areas are recovered.

(3) Representatives additionally elected to the elective offices at the Central Government level shall carry out the same functions as those elected previously. The new delegates to the National Assembly elected for additional representation shall stand for re-election every six years; those of the Legislative Yuan, every three years; and those of the Control Yuan, every six years.

7. During the Period of Communist Rebellion, the National Assembly may enact measures to initiate principles concerning Central Government laws and submit Central Government laws to referendum without being subject to the restriction prescribed in Paragraph 2 of Article 27 of the Constitution.

8. During the Period of Communist Rebellion, the President may, when he deems necessary, convoke an extraordinary session of the National Assembly to discuss initiative or referendum measures.

9. The National Assembly shall establish an organ to study, during its recess, problems relating to constitutional rule.

10. The termination of the Period of Communist Rebellion shall be declared by the President.

11. Amendment or abrogation of the Temporary Provisions shall be resolved by the National Assembly.

**(The Temporary Provisions was terminated  
by the National Assembly on April 22, 1991)**

**3. Additional Articles of the ROC Constitution**  
[Adopted by the National Assembly on April 22, 1991,  
promulgated by the President on May 1, 1991]

**Preamble**

To meet the requisites of national unification, the following additional articles are added to the ROC Constitution in accordance with Article 27, Paragraph 1, Item 3, and Article 174, Item 1:

**Article 1**

Members of the National Assembly shall be elected according to the following regulations without being subject to the restrictions in Articles 26 and 135 of the Constitution:

1. Two members shall be elected from each Special Municipality, each county or city in the free area. However, where the population exceeds 100,000 persons, one member shall be added for each additional 100,000 persons.

2. Three members each shall be elected from lowland and highland aborigines in the free area.

3. Twenty members shall be elected from Chinese citizens living abroad.

4. Eighty members shall be elected from one nationwide constituency.

If the number of seats allotted to a Special Municipality, county or city covered under item one (1) above; or if the number of seats won by a political party under item three (3) or four (4) above is between five and ten, at least one of the seats must be reserved for a woman. Where the number exceeds ten, one seat out of each additional ten must be reserved for a woman.

**Article 2**

Members of the Legislative Yuan shall be elected according to the following regulations without being subject to the restrictions in Article 64 of the Constitution:

1. Two members shall be elected from each province and each Special Municipality in the free area. Where the population exceeds 200,000 persons, however, one member will be added



for each additional 100,000 persons; and where the population exceeds one million persons, one member will be added for each additional 200,000 persons.

2. Three members each shall be elected from lowland and highland aborigines in the free area.

3. Six members shall be elected from Chinese citizens living abroad.

4. Thirty members shall be elected from one nationwide constituency.

If the number of seats allotted to a province or Special Municipality covered under item one (1) above; or if the number of seats won by a political party under item three (3) or four (4) above is between five and ten, then one of the seats shall be reserved for a woman. Where the number exceeds ten, one seat out of each additional ten must be reserved for a woman.

#### **Article 3**

Members of the Control Yuan shall be elected by provincial and municipal councils according to the following regulations without being subject to the restrictions in Article 91 of the Constitution:

1. Twenty-five members shall be elected from Taiwan Province of the free area.

2. Ten members shall be elected from each Special Municipality in the free area.

3. Two members shall be elected from Chinese citizens living abroad.

4. Five members shall be elected from one nationwide constituency.

If the number of seats allotted to Taiwan Province or from a Special Municipality covered under item one (1) or two (2) above; or if the number of seats won by a political party under item four (4) above is between five and ten, then one of the seats shall be reserved for a woman. Where the number of seats exceeds ten, one seat out of each additional ten must be reserved for a woman.

The number of Provincial Assembly members who can be

elected to the Control Yuan is limited to two; the number of members from each municipal council who can be elected to the Control Yuan is limited to one.

#### **Article 4**

The election and recall of members of the National Assembly, Legislative Yuan, and Control Yuan shall be conducted in accordance with the regulations contained in the Public Officials Election and Recall Law. The members representing Chinese citizens living abroad and nationwide shall be elected by party-list proportional representation.

#### **Article 5**

Members of the Second National Assembly shall be elected before December 31, 1991. Their term of office begins on January 1, 1992, and expires on the day when members of the Third National Assembly meet, pursuant to Article 29 of the Constitution prior to the expiration date of the 8th Presidential term in 1996. This is not subject to restrictions imposed by Paragraph 1 of Article 28 of the Constitution.

Those additional members of the National Assembly elected in Taiwan pursuant to the Provisional Articles Effective during the Period of National Mobilization for Suppression of the Communist Rebellion shall exercise their powers together with members of the Second National Assembly until January 31, 1993.

Members of the second Legislative Yuan and members of the Second Control Yuan shall be elected prior to January 31, 1993, and shall begin to exercise power on February 1, 1993.

#### **Article 6**

An extraordinary session of the National Assembly should be convened by the President within three months after the members of the Second National Assembly are elected so that the National Assembly may exercise powers granted by Article 27, Paragraph 1, Item 3 of the Constitution.

#### **Article 7**

The President may, by resolution of the Executive Yuan Council, issue emergency orders to avert an imminent danger to the security of the State or of the people or to cope with any

serious financial or economic crisis, without being subject to the restrictions prescribed in Article 43 of the Constitution. However, such orders shall, within 10 days of issuance, be presented to the Legislative Yuan for confirmation. Should the Legislative Yuan withhold confirmation, the said emergency orders shall forthwith cease to be valid.

#### **Article 8**

If the revision of laws originally in effect solely during the Period of National Mobilization for Suppression of the Communist Rebellion is not completed by the termination of the the Period of National Mobilization for Suppression of the Communist Rebellion, these laws shall remain in effect until July 31, 1992.

#### **Article 9**

To determine major policies for national security, the President may set up the National Security Council and its subsidiary organ, the National Security Bureau.

The Executive Yuan may set up the Central Personnel Administration.

The organizations of the above two paragraphs shall be established according to law. Before the legislative process is completed, the former organizational statutes shall remain in force till December 31, 1993.

#### **Article 10**

The relationship of rights and obligations between the people of the mainland China area and those of the free area, and the disposition of other affairs shall be specially regulated by law.

### **Additional Articles of the Constitution of the Republic of China**

[Adopted by the extraordinary session of the Second National Assembly at its 27th Plenary Meeting on May 27, 1992, and promulgated by President Lee Teng-hui on May 28, 1992.]

#### **Article 11**

In addition to the exercise of its powers and obligations pursuant to Article 27 of the Constitution, the National Assembly

shall also exercise its right to confirm the appointment of personnel nominated by the President in accordance with Additional Article 13, Paragraph 1; Additional Article 14, Paragraph 2; and Additional Article 15, Paragraph 2.

The aforementioned right of confirmation shall be exercised at an extraordinary session of the National Assembly convoked by the President and shall not be subject to the restrictions in Article 30 of the Constitution.

When the National Assembly convenes, it shall hear a report on state of the nation by the President, discuss national affairs, and offer counsel. In the event that the National Assembly has not convened for over a year, the President shall convoke an extraordinary session for the aforementioned purpose notwithstanding the restrictions in Article 30 of the Constitution.

Beginning with the Third National Assembly, delegates to the National Assembly shall be elected every four years and the provisions in Article 28, Paragraph 1 of the Constitution shall not apply.

#### **Article 12**

Effective from the 1996 election for the ninth-term President and Vice President, the President and the Vice President shall be elected by the entire electorate in the free area of the Republic of China.

The electoral method for the aforementioned election shall be formulated in the Additional Articles to the Constitution at an extraordinary session of the National Assembly to be convoked by the President before May 20, 1995.

Beginning with the ninth presidential term, the term of office for both the President and the Vice President shall be four years. The President and the Vice President may be re-elected for a second term; and the provisions in Article 47 of the Constitution shall not apply.

Recall of the President and the Vice President shall be executed in accordance with the following provisions:

- 1) By a motion to recall put forward by one-fourth of all delegates to the National Assembly, and passed with the

concurrence of two-thirds of such delegates.

2) By a resolution to impeach adopted by the Control Yuan, and passed as a resolution to recall by two-thirds of all delegates to the National Assembly.

Should the office of the Vice President become vacant, the President shall nominate a candidate within three months and convoke an extraordinary session of the National Assembly to elect a new Vice President, who shall serve out the original term until its expiration. Should the offices of both the President and the Vice President become vacant, the president of the Legislative Yuan shall serve notice on the National Assembly to convoke an extraordinary session within three months to elect a new President and a new Vice President, who shall serve out each respective original term until its expiration.

#### **Article 13**

The Judicial Yuan shall have a president, a vice president, and a certain number of Grand Justices, all of whom shall be nominated and, with the consent of the National Assembly, appointed by the President; and the pertinent provisions in Article 79 of the Constitution shall not apply.

The Grand Justices of the Judicial Yuan shall, in addition to discharging their duties according to Article 78 of the Constitution, also form a Constitutional Tribunal to adjudicate matters relating to the dissolution of unconstitutional political parties.

A political party shall be unconstitutional if its goals or activities jeopardize the existence of the Republic of China or free, democratic constitutional order.

#### **Article 14**

The Examination Yuan shall be the highest examination body of the state, and shall be responsible for the following matters; and the provisions in Article 83 of the Constitution shall not apply:

- 1) all examination-related matters,
- 2) all matters relating to the qualification screening, security of tenure, pecuniary aid in case of death, and retirement

of civil servants; and

3) all legal matters relating to the employment, discharge, performance evaluation, scale of salaries, promotion, transfer, commendation and award for civil servants.

The Examination Yuan shall have a president, a vice president, and several members, all of whom shall be nominated, and with the consent of the National Assembly, appointed by the President; and the provisions in Article 84 of the Constitution shall not apply.

The provisions in Article 85 of the Constitution concerning holding examinations in different areas, with prescribed numbers of persons to be selected according to various provinces and areas, shall cease to apply.

#### **Article 15**

The Control Yuan shall be the highest control body of the state and shall exercise the powers of impeachment, censure and audit; and the provisions in Articles 90 and 94 of the Constitution concerning exercising the power of consent shall not apply.

The Control Yuan shall have 29 members, including a president and a vice president, all of whom shall serve a term of six years and shall be nominated, and with the consent of the National Assembly, appointed by the President. The provisions in Articles 91 through 93, and in Additional Articles 3 and 4, as well as Article 5, Paragraph 3 of the Constitution concerning the members of the Control Yuan shall cease to be applicable.

Impeachment proceedings by the Control Yuan against a public functionary in the Central Government, any local government, or against personnel of the Judicial Yuan or the Examination Yuan shall be initiated by two or more members of the Control Yuan, and be investigated and voted upon by a committee of not less than nine of its members notwithstanding the restrictions in Article 98 of the Constitution.

In the case of impeachment by the Control Yuan of Control Yuan personnel for dereliction of duty or violation of the law, the provisions of Article 95 and Article 97, Paragraph 2 of the Constitution, as well as the foregoing paragraph shall apply.

A motion by the Control Yuan impeaching the President or the Vice President must be initiated by more than half of all the members of the Control Yuan and passed by more than two-thirds of all such members for it to be submitted to the National Assembly notwithstanding the restrictions in Article 100 of the Constitution.

Members of the Control Yuan must be beyond party affiliation and independently exercise their powers and discharge their responsibilities in accordance with the law.

The provisions in Articles 101 and 102 of the Constitution shall cease to apply.

#### **Article 16**

Provisions of Additional Article 15, Paragraph 2 shall take effect with the nomination of Second Control Yuan members.

The Second Control Yuan members shall assume their offices on February 1, 1993. Provisions of Additional Article 15, Paragraph 1, and Paragraphs 3 through 7 shall take effect on the same date.

Provisions of Additional Article 13, Paragraph 1 and Article 14, Paragraph 2 relating to the appointment of the personnel of the Judicial Yuan and the Examination Yuan shall take effect on February 1, 1993. Nominations of personnel made before January 31, 1993 shall still be approved by the Control Yuan before appointment by the President. Incumbent personnel, however, need not be renominated and re-appointed before the expiration of their terms.

#### **Article 17**

The system of local governments in the provinces and counties shall include the following provisions, which shall be established by the enactment of appropriate laws notwithstanding the restrictions in Article 108, Paragraph 1, Item 1; Articles 112 through 115; and Article 122 of the Constitution:

- 1) There shall be a provincial assembly in each province and a county council in each county. Members of the provincial assembly and the county council shall be elected by the people of the province and the people of the county, respectively.

2) The legislative power of a province and that of a county shall be exercised by the provincial assembly and the county council, respectively.

3) In a province, there shall be a provincial government with a provincial governor. In a county, there shall be a county government with a county magistrate. The provincial governor and the county magistrate shall be elected by the people of the province and the people of the county, respectively.

4) The relationship between the province and the county.

5) The self-governance of provinces is subject to supervision by the Executive Yuan, while the self-governance of counties is subject to supervision by the provincial government.

#### **Article 18**

The State shall encourage development of and investment in science and technology, facilitate the upgrade of industry, promote the modernization of agriculture and fishery, emphasize the exploitation and utilization of water resources, and intensify international economic cooperation.

Environmental and ecological protection shall be given equal consideration with economic and technological development.

The State shall inaugurate universal health insurance coverage and promote the research and development of both modern and traditional medicines.

The State shall protect the dignity of women, safeguard their personal safety, eliminate sexual discrimination, and further substantive equality between the sexes.

The State shall safeguard the rights of the handicapped and disabled to insurance, medical care, education, training, employment assistance, support for daily living needs and relief, so as to help them attain independence and further their careers.

The State shall accord to the aborigines in the free area legal protection of their status and the right to political participation. It shall also provide assistance and encouragement for their education, cultural preservation, social welfare and business undertakings. The same protection and assistance shall be given to the people of Kinmen and Matsu areas.



The State shall accord to Chinese nationals residing overseas protection of their rights to political participation.



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